OFFICE OF THE SHERIFF
COUNTY OF LOS ANGELES
HALL OF JUSTICE
JIM MCDONNELL, SHERIFF
211 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012
A Tradition of Service
Since 1850

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

69 June 14, 2016

LORI GLASGOW
EXECUTIVE OFFICER

June 14, 2016

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
Los Angeles, California 90012

Dear Supervisors:

APPROVE LAW ENFORCEMENT SERVICES AGREEMENT BETWEEN COUNTY OF LOS ANGELES AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (ALL DISTRICTS) (3 VOTES)

SUBJECT

The Los Angeles County (County) Sheriff's Department (Department) seeks approval of a Law Enforcement Services Agreement (Agreement) with the Southern California Regional Rail Authority (SCRRA). The Agreement will be for a one-year period from July 1, 2016, through June 30, 2017.

IT IS RECOMMENDED THAT THE BOARD:

1. Approve and instruct the Chair of the Board to execute the attached Agreement for one-year from July 1, 2016, through June 30, 2017, with a Maximum Contract Sum not to exceed $8,756,400.

2. Delegate authority to the Sheriff to execute amendments to the Agreement to increase, decrease or change the scope of services as requested by SCRRA.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the Agreement is to provide SCRRA with law enforcement services (Services) for an additional year, from July 1, 2016, through June 30, 2017. The current agreement was approved by the Board on June 28, 2011, and expires on June 30, 2016.

The Agreement with SCRRA has provided benefits to the County and the entire Southern California region as a whole, primarily resulting in greater visibility and faster response times to Metrolink train

incidents. This has further enhanced the Department's ability to deploy personnel and other resources during times of mutual aid, disasters, and emergencies. The Department has been able to expand partnerships, provide greater responsiveness, and increase regional focus on reducing crime, as a result of serving SCRRA within the County and Southern California region.

Implementation of Strategic Plan Goals

As part of the Board's commitment to the County, approval of the recommended action would enhance the County's Strategic Plan, Goal 1, Operational Effectiveness/Fiscal Sustainability, Goal 2, Community Support and Responsiveness, and Goal 3, Integrated Services Delivery; by maintaining a law enforcement presence throughout Metro's train and bus systems.

FISCAL IMPACT/FINANCING

None. During the agreement period, SCRRA shall pay the Department for Services according to the appropriate and prevailing billing rates as determined by the Auditor-Controller for Fiscal Year (FY) 2016-17. The Agreement specifies that the billing rates are adjusted at the beginning of every FY as determined by the Auditor-Controller, pursuant to policies and procedures adopted by the Board. Taking into account the increased billing rates for FY 2016-17, the maximum annual cost of the Agreement is not to exceed $8,756,400.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Agreement will: (1) allow for the continued provision of Services to SCRRA by the Department from July 1, 2016, through June 30, 2017; (2) update the billing rates for FY 2016-17; and (3) establish the maximum annual cost of $8,756,400.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This Agreement will continue the quality of Services and public safety to the citizens who rely on SCRRA for transportation within the County and Southern California region. Both the County and SCRRA benefit from the collaborative effects by utilizing County resources in the most efficient manner. There are no anticipated negative impacts in the County.

CONCLUSION

Upon Board approval, please return a copy of the adopted Board letter to the Department's Contract Law Enforcement Bureau.

Sincerely,

JIM McDONNELL
Sheriff

JM:TSR:GD:RTM:
AHR:tmm

Enclosures

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

CONTRACT NUMBER SP466-16

FOR LAW ENFORCEMENT SERVICES

BETWEEN

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

AND

COUNTY OF LOS ANGELES

78504

This Agreement is made and effective July 1, 2016 by and between the SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (hereinafter referred to as AUTHORITY) and the COUNTY OF LOS ANGELES (hereinafter referred to as COUNTY).

RECITALS

WHEREAS, AUTHORITY is a joint powers authority organized under Sections 6500 et seq. of the California Government Code and Section 130255 of the California Public Utilities Code with power to contract for commuter rail law enforcement services described in Attachment A to this Agreement entitled "Attachment A – Scope of Services" (hereinafter referred to as Services) for the Metrolink commuter rail system (hereinafter referred to as METROLINK);

WHEREAS, AUTHORITY desires to enter into an Agreement with COUNTY for the performance of commuter rail law enforcement services by the Los Angeles County Sheriff's Department (hereinafter referred to as Sheriff's Department);

WHEREAS, COUNTY has certified that it is qualified and legally authorized to perform such Services and (1) has reviewed all of the available data furnished by AUTHORITY pertinent to the Services to be rendered; (2) has reviewed and evaluated the Services to be rendered; (3) will exercise the utmost care and skill expected of a practitioner in its profession; and (4) is willing to accept responsibility of performing the Services set forth in this Agreement for the compensation and in accordance with the terms, requirements and conditions herein specified and in accordance with Attachment A, Scope of Services, and Attachment B, Price Schedule, to this Agreement.

78504

NOW, THEREFORE, for the consideration hereinafter stated, the parties agree as follows:

1. SCOPE OF WORK

A. COUNTY will perform the Services and related tasks as described in Attachment A, Scope of Services. Attachment A, Scope of Services, is attached hereto and is incorporated by reference into and made a part of this Agreement.

B. This is a non-exclusive Agreement, whereby AUTHORITY may, at its sole discretion, after consultation with COUNTY, augment or supplant the Services with its own personnel or personnel of another Contractor or entity. Communication and consultation will help to reduce or eliminate conflicts wherein deputies and security officers experience overlap responsibilities as a result of AUTHORITY's augmentation/supplementation. This consultation is critical to ensure the safety of the public, COUNTY and AUTHORITY personnel.

C. The COUNTY Commanding Officer shall have final responsibility and authority over COUNTY operations. The COUNTY Commanding Officer is responsible for implementing AUTHORITY Board of Directors (hereinafter referred to as AUTHORITY Board) policy and the administrative and operational directions for the AUTHORITY Chief Executive Officer (hereinafter referred to as AUTHORITY CEO) and AUTHORITY Chief Operating Officer (hereinafter referred to as AUTHORITY COO). Within these policies and directives, the COUNTY Commanding Officer shall establish priorities for resource allocation of Services. The AUTHORITY Security Manager will direct and command AUTHORITY's Security Department. The AUTHORITY Security

Manager will lead the effort to develop annual performance objectives and goals for the Services.

The AUTHORITY Security Manager shall provide direction to COUNTY regarding delivery of services. COUNTY shall ensure that such Services are delivered in a manner consistent with the priorities, annual performance objectives and goals established by AUTHORITY. Any dispute arising under this Section 1C shall be resolved by the parties in good faith, but is explicitly exempt from the provisions of Section 21, Resolution of Disputes, of this Agreement

D. On or before January 10th of each year after 2016, AUTHORITY shall inform COUNTY of the next fiscal year's anticipated staffing levels and anticipated budget for Services under this Agreement. AUTHORITY shall have the exclusive right to annually determine the anticipated level of service and budget required under this Agreement. The actual staffing levels will be subject to the approval of the budget by the AUTHORITY Board and the adjustment of staffing levels within the budget by AUTHORITY.

In the event that COUNTY determines that the anticipated staffing levels and Services established by AUTHORITY under this Section does not permit COUNTY to ensure performance of Services to the professional level required under this Agreement, COUNTY shall so inform AUTHORITY and the parties will resolve the issues as set out in this Section 1C, or as they may otherwise mutually agree at that time.

By March 1st of the same year, COUNTY shall submit to AUTHORITY a proposal, within AUTHORITY's anticipated budget, for the number and distribution of assigned dedicated positions for the next fiscal year. This proposal shall be based on the rates for the assigned dedicated positions and supervisory ratios for the next fiscal year, the costs of which are established annually by the Los Angeles County Auditor-Controller. The method used, in the first year of this Agreement, for calculating the rate for the assigned positions shall remain the same for all years of this Agreement.

AUTHORITY's designated personnel and COUNTY's designated personnel shall meet and reach agreement on the actual number and distribution of assigned dedicated positions. Disagreements with regard to the number and distribution of these positions and supervisory ratios shall be resolved by the parties and are not subject to Section 21, Resolution of Disputes, of this Agreement.

AUTHORITY reserves the right for final decision regarding staffing levels.

Authorized personnel of the AUTHORITY and COUNTY shall endorse a new Attachment B, Price Schedule, listing the applicable fiscal year, the rates for the assigned dedicated positions, and the agreed-upon number and distribution of these positions for the next fiscal year. Distribution, as referenced in this Section, does not infer deployments, which are at the sole discretion of COUNTY. The new Attachment B, Price Schedule, shall replace the prior Attachment B, Price Schedule, as an Amendment to this Agreement

E. AUTHORITY will provide COUNTY office staff, telephones, work facilities, facilities maintenance, furniture and a limited number of AUTHORITY computers, as determined by AUTHORITY after consultation with the COUNTY, to support the Services. AUTHORITY will not provide: radios, printing, postage or other office supplies, except for mobile handheld radios to be used for monitoring railroad frequencies.

In order to ensure rapid and effective operational radio communications, COUNTY is required to maintain a centralized dispatch center for the support of this Agreement. . All communications and coordination for Services will emanate from COUNTY'S location. AUTHORITY will provide cell phones to field personnel to facilitate communication with AUTHORITY.

2. PERIOD OF PERFORMANCE

The period of performance shall be for one year and shall commence on July 1, 2016 and shall expire on June 30, 2017, unless sooner terminated by AUTHORITY or extended as provided in this Agreement, upon mutual and written consent of both parties, COUNTY shall provide AUTHORITY with no less than twelve (12) months advance written notice in the event COUNTY does not agree to extend the term of the Agreement. This Agreement will be funded on a fiscal year basis.

3. UNIT RATE CONTRACT BASED ON STAFFING LEVELS - PRICE SCHEDULE - PAYMENT AND COMPENSATION FOR SERVICES - ANNUAL SERVICE LEVEL AND PROJECT BUDGET - INVOICES AND PAYMENT- CHANGES TO SERVICE LEVEL AND BUDGET- STRIKES OR WORK STOPPAGE - PAYMENT OF RESOLVED DISPUTES

A. STAFFING LEVELS

This is a service unit Agreement. All Services shall be performed under the terms and conditions of this Agreement and in accordance with Attachment A, Scope of Services. Payments under this Agreement shall be compensation for work hours supplied by COUNTY and exclusively dedicated to perform work under this Agreement, independent of mutual agreements and other emergency response deployments based on the needs of the region. AUTHORITY will NOT be charged for the provision of services outside the agreed upon AUTHORITY service areas.

B. PRICE SCHEDULE

The basis for payment for Services under this Agreement is the established unit rates for the service units assigned/dedicated to this Agreement and other designated positions as set forth in Attachment A, Scope of Services. Attachment B, Price Schedule, hereto indicates the rates for the various service-unit positions assigned to this Agreement for the period of July 1, 2016 through June 30, 2017 and also sets forth the number of the various law enforcement service unit level positions assigned to this Agreement that the parties have mutually agreed that COUNTY will provide to AUTHORITY for the period of July 1, 2016 through June 30, 2017. These will be adjusted annually as required in Section D, below.

C. PAYMENT AND COMPENSATION FOR SERVICES

COUNTY agrees to provide all personnel, material and equipment required to perform the Services set forth in the Attachment A, Scope of Services, in accordance with Sections 1D and 1E of this Agreement and in accordance with the Attachment B, Price Schedule. AUTHORITY shall pay as full compensation an amount NOT TO EXCEED (NTE) amount of $8,756,400 for Services for the period July 1, 2016 through June 30, 2017.

D. ANNUAL SERVICE LEVEL AND PROJECT BUDGET

In accordance with Section 1D of this Agreement, AUTHORITY shall establish an annual service level and budget for Services under this Agreement. The selection of Services by AUTHORITY shall be made by AUTHORITY's Security Manager and is subject to approval by AUTHORITY CEO and AUTHORITY Board.

D.1 THIRD PARTY ANNUAL PARKING FEES

COUNTY shall be responsible for paying parking fees for COUNTY personnel who park in the Gateway Headquarters Building. AUTHORITY is not responsible for paying these parking fees.

D.2 FARE EXEMPTION FOR COUNTY SHERIFF'S PERSONNEL

As part of the Services provided under this Agreement, Sheriff's Department personnel, whether on or off duty, shall be permitted to ride METROLINK trains as fare exempt passengers when in Class "A" uniforms, and shall be prepared to assist AUTHORITY staff in any emergency, or upon request by AUTHORITY staff or conductors.

E. INVOICES AND PAYMENT

COUNTY shall submit a monthly invoice requesting payment for Services rendered within thirty (30) days of the close of the preceding month, indicating therein the amounts billed and the number of contracted service level positions. The invoice shall include as attachments all necessary supporting documents, schedules, deployment sheets, unit, name, location, assignment dates and time of service, straight time and over-time worked and other materials to fully support the total billing amount. These supporting documents shall be of the nature and standards as set forth in Generally Accepted Accounting Principles for state and local governments, and all data reported shall reconcile with invoices/billing statements submitted to AUTHORITY by COUNTY.

The request for payment shall be submitted in three (3) copies, with one (1) full copy of all supporting documentation sufficient to support the invoice amounts. The invoices shall be submitted in triplicate on COUNTY's letterhead to:

Southern California Regional Rail Authority
One Gateway, 11th Floor
Los Angeles, CA 90012
Attn: Accounts Payable

Each invoice shall include the following information:

- Agreement number
- Time period covered by the invoice
- Amount of payment requested
- Information as requested by AUTHORITY

One (1) additional copy of the full invoice, including the supporting documentation, shall be sent directly to the AUTHORITY Project Manager.

Within sixty (60) days after receipt of an invoice, AUTHORITY shall pay all undisputed amounts and shall notify COUNTY in writing of the basis of nonpayment of any amounts in dispute. AUTHORITY may withhold any amounts which are disputed or which are owed to AUTHORITY pursuant to this Agreement. AUTHORITY and COUNTY agree to commence the dispute resolution procedures stated in Section 21 of this Agreement within thirty (30) days after AUTHORITY notifies COUNTY in writing of the basis of nonpayment of any amounts in dispute.

If such payment is not delivered to the COUNTY office which is described on said invoice within sixty (60) days after the date of the invoice, COUNTY is entitled to recover interest thereon except for disputed amounts. For all disputed amounts, AUTHORITY shall provide COUNTY with written notice of the dispute including the invoice date, amount, and reasons for dispute within 10 days after receipt of the invoice.

The parties shall memorialize the resolution of the dispute in writing. For any disputed amounts, interest shall accrue if payment is not received within 60 days after the dispute resolution is memorialized.

Interest shall be at the rate of ten percent (10%) per annum or any portion thereof, calculated from the day of the month in which the Services were performed, or in the case of disputed amounts, calculated from the date the resolution is memorialized.

F. CHANGES TO SERVICE LEVEL AND BUDGET

In addition to the procedure set out in Section 1D, if AUTHORITY desires to initiate a change to the Services budget or service level, then AUTHORITY will direct such a change and COUNTY must comply with this change within sixty (60) days. A change unilaterally decided by AUTHORITY may not exceed ten percent (10%) of that year's base service level or budget. Any change in service levels or budget that exceeds ten percent (10%) shall be negotiated and agreed to by the parties.

G. STRIKES OR WORK STOPPAGE

AUTHORITY will not pay for Services not received. During strikes or work stoppages when COUNTY assigns its personnel to AUTHORITY work locations as requested, then AUTHORITY will pay the normal billing rates for those service units assigned to that service. If there is an excess of personnel who are not required during a strike or work stoppage due to commuter rail services running at decreased service levels, then AUTHORITY will not pay for services not received.

H. PAYMENT OF RESOLVED DISPUTES

1. AUTHORITY may deduct from its next payment to COUNTY all amounts owed to AUTHORITY pursuant to the resolution of any dispute under Section 21 of this Agreement, unless there is a mutually agreed upon payment schedule.
2. AUTHORITY will pay to COUNTY, within sixty (60) days, any amounts owed to COUNTY pursuant to the resolution of any dispute under Section 21 of this Agreement, unless there is a mutually agreed upon payment schedule. If AUTHORITY fails to make payment within sixty (60) days, then the late payment provisions in Section 3E shall apply.

4. AUDIT AND INSPECTION OF RECORDS

COUNTY shall keep and maintain full and complete accounting books, in-service sheets, records of account of its costs and expenses claimed to be due and payable related to the performance of the Services in accordance with Generally Accepted Accounting Principles for state and local governements and Federal Acquisition Regulation, Section 31.6. COUNTY shall maintain records related to any transaction, activity, time cards, employment records, reserves, if any, including, but not limited to those established for personal liability, property damage, workers' compensation, third party litigation, and shall arrange with LACERA to maintain records related to retirement.

COUNTY agrees that AUTHORITY or any duly authorized representative shall have full and complete access to and the right to examine, audit, copy or transcribe any record kept in accordance with this section or other records relating to this Agreement, except those that may not be disclosed by law, upon five (5) business days notice. Such material, including all pertinent cost, accounting, financial records and proprietary data must be kept and maintained by COUNTY for a period of three (3) years after completion of the period of performance of this Agreement or if this Agreement is terminated in whole or in part after the final termination, unless AUTHORITY's written permission is given to dispose of the material prior to this time.

Incident reports shall be made available to AUTHORITY's Security Manager only as permitted by law.

5. NOTIFICATION

All notices hereunder concerning this Agreement and the Services to be performed shall be physically transmitted by courier, overnight mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To AUTHORITY:
SCRRA
1 Gateway Plaza, 11th Floor
Los Angeles, CA 90012
Attn: Contract Administrator
Contract No. SP466-16

To COUNTY:
Sheriff Contract Law Enforcement
211 West Temple Street 7th Floor
Los Angeles, CA 90012
Contract No. SP466-16
Attn: Metrolink Services Commander

6. AUTHORITY AND COUNTY REPRESENTATIVES

A. CHAIN OF COMMAND

The currently assigned COUNTY Commanding Officer shall function as AUTHORITY's Chief of Police for Services purposes. The COUNTY Commanding Officer and/or his/her delegate shall notify AUTHORITY, through the AUTHORITY CEO and/or his delegate, of any security issues, major incidents, after actions reports, etc.

COUNTY shall have exclusive command and control of all law enforcement functions and personnel consistent with AUTHORITY direction. The AUTHORITY CEO and/or his delegate shall be responsible for communicating AUTHORITY direction to COUNTY.

The AUTHORITY CEO shall have exclusive command and control of any other commuter rail security functions. COUNTY's command staff and AUTHORITY management shall meet weekly, or as mutually determined to be appropriate on an ongoing basis

B. AUTHORITY'S KEY PERSONNEL

The AUTHORITY Project Manager under this Agreement shall be the AUTHORITY Security Manager. The AUTHORITY Project Manager shall be the point of contact for all matters relating to the program and the operations. The Authority Contract Administrator shall be the sole and exclusive contact on all contractual matters.

The AUTHORITY Security Manager will provide contractual management of COUNTY. As such, the COUNTY Commanding Officer shall consult and work with the AUTHORITY Contract Administrator and AUTHORITY Security Manager regarding contractual and other law enforcement related issues as they apply to impacting the performance of AUTHORITY'S commuter rail system. All security personnel and assets of AUTHORITY shall be under the command and control of AUTHORITY Security Manager.

C. COUNTY'S KEY PERSONNEL

The following are COUNTY's key personnel for the Services to be provided: The COUNTY Commanding Officer shall be the Unit Commander at METROLINK. The Commanding Officer, or his/her designees, shall direct and manage the Services of COUNTY. Captains and higher ranked officers shall be designated as key personnel. The COUNTY Commanding Officer shall regularly report to AUTHORITY's management and shall either attend, or ensure the attendance of subordinate executives, any meetings requested by AUTHORITY.

AUTHORITY awarded this Agreement to COUNTY based on AUTHORITY's confidence and reliance on the expertise of COUNTY key personnel described above. COUNTY shall not reassign key personnel or assign other personnel to key personnel roles until AUTHORITY approves a replacement in writing.

AUTHORITY shall have the ability to interview and accept the nominated law enforcement candidate for the COUNTY Commanding Officer position. AUTHORITY will notify COUNTY regarding candidates deemed not acceptable.

AUTHORITY Project Manager, in consultation with the COUNTY Commanding Officer, shall have the authority to effect a transfer out from the Law Enforcement unit any deputy/officer or other staff member who is unacceptable to AUTHORITY consistent with Section 20C of this Agreement.

7. TERMINATION FOR CONVENIENCE

AUTHORITY may, by written notice to COUNTY, terminate this Agreement for AUTHORITY's convenience. Upon receipt of such notice, COUNTY shall: a) discontinue Services as directed in the notice; b) deliver to AUTHORITY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been prepared or developed by the COUNTY in performing this Agreement, whether completed or in process, except those that cannot be disclosed by law; and (c) submit a proposed termination plan that will be agreed upon by the parties. Termination of this Agreement shall be effective one (1) year after the receipt by COUNTY of such notice, unless otherwise agreed by the parties.

If the termination is for the convenience of AUTHORITY, COUNTY shall submit a final invoice within one hundred and twenty (120) days of the effective date of termination. AUTHORITY shall pay COUNTY in the manner stated in Section 3E of this Agreement for Services completed prior to the effective date of termination and for all costs reasonably incurred by COUNTY as a result of the termination, including, but not limited to the salary and benefit costs for COUNTY employees who were assigned to provide Services under this Agreement whom COUNTY is unable to reassign to other funded vacant positions in COUNTY'S organization due to the unavailability of such positions. COUNTY shall use its best efforts to place such employees into funded positions immediately as they become available. Under no circumstances will AUTHORITY be responsible for such termination costs for more than six (6) months after the effective date of termination under this Section. Neither party shall be entitled to anticipatory damages as a result of any termination under this Section.

All disputes pertaining to COUNTY's reasonable costs incurred as a result of the termination under this Section shall be resolved pursuant to the provisions of Section 21, Resolution of Disputes, of this Agreement.

8. TERMINATION FOR BREACH OF AGREEMENT

A. If the COUNTY fails to perform one or more of the provisions of this Agreement, or fails to make progress so as to endanger timely performance of this Agreement, AUTHORITY may give COUNTY written notice of such default. If COUNTY does not cure such default or provide a plan to cure such default which is acceptable to the AUTHORITY within thirty (30) days of receipt of the written notice, then AUTHORITY may terminate this Agreement by written notice due to COUNTY 's breach of this Agreement. Provided, however, should the cure require more than thirty (30) days, COUNTY shall be provided a reasonable time period to cure the default, provided COUNTY commences the cure within the thirty (30) day period and continues to diligently prosecute the cure.

B. If AUTHORITY determines that COUNTY has violated Section 23, Compliance with Lobbying Policies, of this Agreement, then AUTHORITY may, after consultation with COUNTY, terminate this Agreement. COUNTY may appeal any such decision to AUTHORITY Board, which will make the final decision regarding such violation.

C. In the event AUTHORITY terminates this Agreement as provided in this Section, AUTHORITY shall immediately assume the obligations to provide said Services and may procure, upon such terms and in such manner as AUTHORITY may deem appropriate, Services similar in scope and level of effort to those so terminated. COUNTY shall be liable to AUTHORITY for all of its reasonable excess costs and damages, incurred to provide said Services, except COUNTY's liability for said excess costs shall not be greater than twenty percent (20%) of the amount that the Services would have cost if COUNTY were to complete its service level obligations under this Agreement. In no event shall COUNTY's liability for said excess costs extend beyond the fiscal year in which the termination occurs.

D. All finished or unfinished documents and materials produced or procured under this Agreement shall become AUTHORITY property, provided they are or would become AUTHORITY documents and materials pursuant to this Agreement, upon date of such termination, except as prohibited by law.

E. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that COUNTY was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if notice of termination had been issued pursuant to Section 7, Termination for Convenience, of this Agreement.

F. The rights and remedies of AUTHORITY provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

9. ASSIGNMENT

This Agreement, any interest herein or claim hereunder, may not be assigned by COUNTY either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by COUNTY, without the prior written consent of AUTHORITY. Unless otherwise stated in AUTHORITY's written consent, consent by AUTHORITY shall not be deemed to relieve COUNTY of its obligations to comply fully with all terms and conditions of this Agreement.

10. INDEPENDENT CONTRACTOR

COUNTY's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. COUNTY's personnel performing Services under this Agreement shall at all times be under COUNTY's exclusive control and shall be employees of COUNTY and not employees of AUTHORITY. COUNTY shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as Social Security, employment related practices income tax withholding, unemployment compensation, workers' compensation and similar matters.

11. INSURANCE

AUTHORITY and COUNTY each pledge to maintain programs of commercial insurance, self-insurance or any combination thereof, at each party's option, to satisfy their indemnity obligations hereunder, and each party will supply a letter or other evidence that it maintains such coverage upon request by the other party.

12. INDEMNIFICATION

Subject to the limitations stated in this Section or elsewhere, COUNTY shall indemnify, defend and hold harmless AUTHORITY, and its member agencies, and their officers, directors, employees and agents (collectively, Indemnified Parties) from and against any and all liability, expense (including but not limited to defense costs and attorney's fees), claims, causes of action, and lawsuits for damages, including, but not limited to, bodily injury, death, personal injury or property damage (including property of COUNTY) arising from or connected with, negligent, intentional or reckless act or omission of COUNTY, its officers, directors, employees, agents, sub-contractors or suppliers while providing services under this Agreement.

Notwithstanding anything contained herein or stated elsewhere, COUNTY shall have no obligation or liability, including any obligation to indemnify or defend any Indemnified Party, (a) for a failure to prevent any crime or tortious act, (b) for any injury, loss or damage caused directly or indirectly by a criminal or tortious act of anyone other than COUNTY, its officers, directors, employees, agents, sub-contractors or suppliers while providing services under this Agreement, or (c) for any injury, loss or damage caused by any means whatsoever except as the result of a failure by COUNTY, its officers, directors, employees, agents, subcontractors, or suppliers to perform the Services under this Agreement.

The parties acknowledge and agree that Attachment A, Scope of Services, provides a general description of the law enforcement services to be provided under this Agreement. AUTHORITY understands and agrees that the law enforcement services provided hereunder are not intended or expected to accomplish patrolling or law enforcement at any particular location, more than a few times a day or less, or to prevent crime or wrongdoing from occurring at any particular place or time. COUNTY shall have no obligation to patrol or provide law enforcement at any specific location at any particular time(s) except under a written schedule provided in advance by AUTHORITY and agreed to by COUNTY.

Notwithstanding anything contained herein, COUNTY's obligations hereunder to AUTHORITY or any Indemnified Party shall be limited by any immunity or freedom from suit or liability provided by law, including but not limited to those stated in California Government Code sections 818.2 and 845, as if such immunity or legal provision were incorporated in full in this Agreement and made applicable to AUTHORITY and all Indemnified Parties.

Any obligation by COUNTY or AUTHORITY to provide defense or indemnity hereunder shall not arise until it has been finally determined by competent judicial authority that such indemnity is owed under the provisions of this Section. The procedures in Section 21, Resolution of Disputes, shall not apply to the final determination in the first sentence of this subparagraph.

AUTHORITY shall indemnify, defend and hold harmless COUNTY, and its officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to defense costs and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury or property damage (including property of AUTHORITY) arising from or connected with any alleged act and/or omission of AUTHORITY, its officers, directors, employees, agents, sub-contractors or suppliers.

It is the intent of the parties to this Agreement that nothing herein shall impose, nor shall be interpreted to impose, on COUNTY any liability for injuries or death to any COUNTY employee greater than the liability imposed pursuant to the provisions of the worker's compensation laws.

This Section 12, Indemnification, shall not be subject to Section 21, Resolution of Disputes, of this Agreement.

This Section 12, Indemnification, shall survive termination of this Agreement and/or final payment thereunder.

This Section 12, Indemnification, has been negotiated to reflect those terms in the separate Law Enforcement Services Agreement between COUNTY and the Los Angeles Metropolitan Transportation Authority ("Metro"), a member agency of AUTHORITY. The parties therefore agree that if the comparable positions on indemnity are re-negotiated between COUNTY and METRO during the term of this Agreement or its options, that the AUTHORITY may in its discretion choose to amend this Agreement to incorporate the same or comparable changes and the COUNTY will agree to such amendments if requested.

13. REVISIONS IN SCOPE OF SERVICES

In addition to other changes in Services authorized by this Agreement, by written notice or order, AUTHORITY, through AUTHORITY Project Manager or his or her designee, may, from time to time, make changes to Attachment A, Scope of Services, of this Agreement. Changes in Attachment A, Scope of Services, shall be mutually agreed upon and incorporated into this Agreement and/or Attachment A, Scope of Services, in writing through a fully-executed Amendment to this Agreement. Upon incorporation, COUNTY shall perform the Services, as modified. AUTHORITY and COUNTY shall designate in writing those employees, other than the AUTHORITY Project Manager and the Sheriff, who are authorized to agree to changes in Attachment A, Scope of Services.

14. RIGHTS IN TECHNICAL DATA AND INFORMATION

A. No material or technical data prepared by COUNTY under this Agreement is to be released by COUNTY to any other person or entity except as necessary for the performance of the Services. COUNTY shall first notify the AUTHORITY Project Manager and AUTHORITY Media Relations in sufficient time and with undue delay regarding press releases (this only relates to planned or prepared or official releases by COUNTY) or information concerning AUTHORITY's policies, procedures, practices and personnel, that might appear in any publication or dissemination, including but not limited to newspapers, magazines, electronic media, as to allow AUTHORITY appropriate and timely input and recommendations as to the release's content as it relates to AUTHORITY's policies, procedures, practices and personnel, and subject to California law. It is agreed and understood by both parties that any media inquiries related to law enforcement activities is within COUNTY's purview subject to COUNTY's policies, procedures and California law. Additionally, COUNTY will not respond to media inquiries that address AUTHORITY's policies, procedures, practices and personnel without express authorization from AUTHORITY's Project Manager, COO, or Media Relations representative. AUTHORITY however is cognizant of emergent and developing situations that may involve media demands for "on-the-spot" statements by on-scene COUNTY personnel and that COUNTY will ensure these situations are to be managed and addressed within COUNTY's policies and procedures and that notification of AUTHORITY's Project Manager, COO, or Media Relations representative will be made as time permits.

Subject to California law and the retention policies of COUNTY, COUNTY agrees and understands that it will commit its best efforts in production of any and all reasonable requests by AUTHORITY for any documents, reports and other products and data, copies or originals, produced under this Agreement and without restriction or limitation on their use unless otherwise prohibited by law or this Agreement. Any dispute as to the fulfillment, response or compliance with this Section is subject to Section 21, Resolution of Disputes, of this Agreement.

15. OWNERSHIP OF REPORTS AND DOCUMENTS

Copies of all letters, documents, reports and other products and data produced by COUNTY under this Agreement shall be delivered to, and become the property of AUTHORITY, upon request, except as prohibited by law. Additional copies may be made for COUNTY's records, but shall not be furnished to others without written notice to AUTHORITY unless otherwise required by law or authorized herein.

16. RIGHTS IN PROPERTY

A. AUTHORITY and all its designees shall have access at all reasonable times to the premises in which any AUTHORITY property is located for the purpose of inspecting AUTHORITY property.

B. Upon termination of this Agreement, or at such earlier dates as may be fixed by AUTHORITY: (1) AUTHORITY shall prepare and COUNTY shall verify and submit a final inventory list of all AUTHORITY property which includes the property's description, location and condition, and (2) COUNTY shall prepare for shipment, and deliver F.O.B. origin, AUTHORITY property as may be directed or authorized by AUTHORITY.

C. COUNTY shall not prevent any AUTHORITY personnel, including armed AUTHORITY Transit Security Officers, from performing their duties at or within any AUTHORITY facility, property, or anywhere within AUTHORITY's commuter rail system or by operation of law. This does not preclude COUNTY from performing its duties as prescribed by law.

D. AUTHORITY may apply for certain federal, state, local or private grant funding to support commuter rail security or safety programs. COUNTY shall cooperate with AUTHORITY in the grant application process and in any implementation required through the grants. For all AUTHORITY awarded grants, any and all work products, documents, and property shall be the sole and exclusive property of AUTHORITY subject to the grant guidelines. COUNTY will be required to keep and maintain at all times a record of such property, including serial numbers, product name, and the COUNTY employee in possession of such property. Such possessor/holder information will be provided to AUTHORITY and updated as such property is issued/reissued.

17. PRESENTATION OF CLAIMS BY COUNTY

COUNTY shall file any and all claims with the AUTHORITY Project Manager in writing within forty-five (45) days of the discovery of any event or occurrence giving rise to the claim. The claim shall be in sufficient detail to enable AUTHORITY to ascertain the claim's basis and amount, and shall describe the date, place and other pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by COUNTY.

AUTHORITY shall, within ninety (90) days of the receipt of the claim, or within any extended period mutually agreed to in writing by the parties, endeavor to give written notice of the decision, however, if no notice of the decision is made within ninety (90)

days of the receipt of the claim by AUTHORITY, or within any extended period mutually agreed to in writing by the parties, the claim shall be deemed rejected by AUTHORITY.

Even though a claim may be filed and/or in review by AUTHORITY, COUNTY shall continue to perform in accordance with this Agreement.

18. EQUAL OPPORTUNITY

In connection with the execution of this Agreement, COUNTY shall not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, age, religion, color, ethnicity, sex, national origin, ancestry, physical handicap, mental condition, political affiliation, sexual orientation or marital status. COUNTY shall take action to ensure that applicants and employees are treated without regard to the above.

19. COMPLIANCE WITH 49 CFR PART 655, PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN COMMUTER RAIL OPERATIONS

COUNTY shall comply with 49 CFR Part 655 as Services provided under this Agreement are deemed safety sensitive.

20. STANDARDS OF PERFORMANCE

A. AUTHORITY Project Manager, annually, in consultation with the COUNTY Commanding Officer, will review the performance of COUNTY and develop standards of performance for the forthcoming year. The standards of performance shall be as follows unless otherwise modified by the parties in writing. Failure to achieve the required performance measures shall result in the LASD providing the Authority with the additional services not obtained for the month at no expense to Authority.

Outputs	Performance Measure	Explanation	Source	Reporting
Trains Rides	The number of trains ridden compared to the total number of trains operated each week	The purpose is to measure frequency of trains ridden within the operational system	System-wide Crime and Arrest Report	525 trains a month
ROW Enforcement	The number of hours dedicated to ROW enforcement each week	The purpose is to measure the number of hours and citations issued at the ROW's	System-wide Crime and Arrest Report	24 hours a week

B. COUNTY shall perform and exercise, and require its sub-contractors/sub-consultants to perform and exercise due professional care and competence in the performance of the Services in accordance with the requirements of this Agreement. COUNTY shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Services. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

C. All workers shall have sufficient skill and experience to perform the Services assigned to them. AUTHORITY shall have the right, at its sole discretion after consultation with COUNTY, to require the removal of COUNTY personnel at any level assigned to the performance of the Services at no additional fee or cost to AUTHORITY, if AUTHORITY considers such removal in its best interests and requests such removal in writing. Further, an employee who is removed from performing Services under this Agreement under this Section shall not be reassigned to perform Services under this Agreement without AUTHORITY's prior written authority.

C. It is required that all workers on this Agreement shall have sufficient skills and experience to perform the Services contained in this Agreement. It is also understood and agreed that COUNTY shall not assign or reassign personnel who are under medical restrictions, disciplinary actions, internal affairs review or who are not fully "Patrolled Trained" as required by COUNTY's own training standards AUTHORITY expects that COUNTY's workers are already experienced in patrol functions and that any training conducted by COUNTY's workers will be for the sole purpose of familiarization of AUTHORITY's operations and any other enhancement training authorized by AUTHORITY's Unit Commander.

D. The COUNTY will be responsible for the response time between incidents and release of the train to service. The AUTHORITY will measure the response and release back to the railroad monthly through assessment of Authority's compliance log. It is the responsibility of the COUNTY to improve relationships with other municipal law enforcement agencies to ensure that the train is released timely.

21. RESOLUTION OF DISPUTES

A. TERMS AND CONDITIONS

In the event of a claim or dispute arising out of or relating to this Agreement, both parties shall make good faith efforts to resolve the claim or dispute through negotiation. If the dispute is not resolved by these negotiations, the matter will be submitted to JAMS, or its successor, for mediation.

The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement, except where explicitly excluded in this Agreement or otherwise, shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration.

The provisions of this Section 21 may be enforced by any Court of competent jurisdiction and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the party against whom enforcement is ordered.

B. MEDIATION

1. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested.

2. The parties will cooperate with JAMS and one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings.

3. The parties covenant that they will participate in the mediation in good faith and that they will share equally in its' costs.

4. All offers, promises, conduct, statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employee, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in mediation.

5. Any mediation agreements are subject to final approval by the AUTHORITY Board and the COUNTY Board of Supervisors.

C. BINDING ARBITRATION

1. Except where explicitly excluded in this Agreement, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Los Angeles, California, before a sole arbitrator, in accordance with the laws of the State of California. The arbitration shall be administered by JAMS pursuant to its JAMS Comprehensive Arbitration Rules and Procedures, effective July 1, 2014, attached hereto as Attachment C, with the modifications listed in Section C4 below.

   This binding arbitration clause shall only apply to disputes regarding monetary claims and shall give the arbitrator jurisdiction to render only monetary awards for such claims.

2. Either party may initiate binding arbitration with respect to the matter submitted to mediation by filing a written demand for binding arbitration at any time following the initial mediation session or ninety (90) days after the date of filing the written request for mediation, whichever occurs last.

3. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as the arbitrator.

4. The parties agree to the following modifications to the JAMS Comprehensive Arbitration Rules and Procedures, effective July 1, 2014:

   a) In Rule 15(h), the following sentence is added to the end of the paragraph: "The Arbitrator's failure to comply with this section and Section 1281.9 of the California Code of Civil Procedure shall automatically disqualify the selected Arbitrator."

   b) In Rule 17(c), the last sentence shall read: "Documents that have not been previously exchanged or witnesses and experts not previously identified shall not be considered by the Arbitrator at the hearing unless agreed by the parties or upon showing of good cause."

   c) Rule 22 shall be replaced in its entirety with the following: "The Arbitrator shall conduct the hearing and make all rulings and decisions under Rule 17 in strict conformity with the California Evidence Code."

   d) Rule 24, subsections (c), (d) and (e) are removed and replaced with the following: "In determining the award, the arbitrator shall apply the statutory and decisional law of the State of California. The Arbitrator shall not have the power to award any relief other than a monetary award."

5. The arbitrator shall, in the award, allocate all of the costs of arbitration and the mediation, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, as determined by the arbitrator.

6. The parties by signing this Agreement are agreeing to have all disputes, claims or controversies arising out of or relating to this Agreement, except where explicitly excluded in this Agreement, decided by neutral binding arbitration, and are giving up any right they may possess to have those matters litigated in a court or jury trial. Further the parties are giving up their judicial rights to discovery and appeal except to the extent that are specifically provided for under this Agreement.

7. AUTHORITY and COUNTY agree to incorporate the Optional Arbitration Appeal Procedures as stated in Rule 34 of the JAMS Comprehensive Arbitration Rules and Procedures.

8. In the event JAMS or its successor is unable to perform its duties under this Agreement, the parties shall mutually appoint another similar dispute resolution organization to perform those duties. The JAMS Comprehensive Arbitration Rules and Procedures, effective July 1, 2014 and as modified herein, shall apply.

D. WORK STOPPAGE

In no event shall work under this Agreement be stopped in the event of a claim or dispute. If COUNTY stops the work under this Agreement, then AUTHORITY shall be relieved of its payment obligations under this Agreement.

22. COMPLIANCE WITH LAW

COUNTY shall familiarize itself with and perform the Services required under this Agreement in conformity with requirements and standards of Authority. County shall also comply with all Federal, California and local laws and ordinances.

23. COMPLIANCE WITH LOBBYING POLICIES

A. COUNTY agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by AUTHORITY in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with AUTHORITY's Ethics Policy.

B. If COUNTY (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with AUTHORITY's Ethics Policy, such failure may be considered a material breach of this Agreement and AUTHORITY could have the potential right to immediately terminate or suspend this Agreement.

24. PUBLIC RECORDS ACT

A. All records, documents, drawings, plans, specifications and other material relating to conduct of AUTHORITY's business, including materials submitted by COUNTY in its proposal and during the course of performing the Services under this Agreement, shall become the exclusive property of AUTHORITY, except as prohibited by law or as otherwise provided herein, and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. AUTHORITY's and COUNTY's use and disclosure of their records are governed by this Act.

B. The AUTHORITY Project Manager shall be notified within one (1) business day of the receipt of a request for disclosure of such materials, and the party receiving the request agrees not to disclose such records if so directed by the other party in compliance with applicable sections of the Public Records Act. In the event of litigation concerning the disclosure of any material, the party objecting to disclosure shall, at its sole expense and risk, be responsible for prosecuting or defending any action concerning the materials, and shall indemnify and hold the other party harmless from all costs and expenses, including attorneys' fees, in connection with such action.

25. WAIVER / INVALIDITY

No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of the provision, or of any other breach of the provision of the Agreement. Failure of either party to enforce any provision of this Agreement at

any time shall not be construed as a waiver of that provision. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

26. FORCE MAJEURE

Performance of each and all of COUNTY's and AUTHORITY's covenants herein shall be subject to such delays as may occur without COUNTY's or AUTHORITY's fault from acts of God, riots, or from other similar causes beyond COUNTY's or AUTHORITY's control.

27. GOVERNING LAW

The validity of this Agreement and or any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the law of the State of California.

28. ENTIRE AGREEMENT

This Agreement, and any Attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between AUTHORITY and COUNTY and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written.

29. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives authorized to enter into and modify the Agreement. In order to be effective, Amendments may require prior approval by the AUTHORITY Board and the Los Angeles County Board of Supervisors, and in all instances require prior signature of an authorized representative of AUTHORITY and COUNTY.

30. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Services, (3) Attachment B, Price Schedule, and (4) Attachment C (JAMS Comprehensive Arbitration Rules & Procedures). Any Amendments shall take the order of precedence from the document it amends, with later Amendments having precedence over earlier Amendments.

31. CONFIDENTIALITY

COUNTY agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by COUNTY in the performance of this Agreement, shall be considered and kept as the private, confidential and privileged records of AUTHORITY, except those prohibited by law or as otherwise provided in this Agreement, and will not be divulged to any person, firm, corporation, or other entity except on the direct written authorization of

AUTHORITY or as otherwise provided in this Agreement, including but not limited to Section 14 and Section 24. Further, upon expiration or termination of this Agreement for any reason, COUNTY agrees that it will continue to treat as private and privileged any information, data, figures, records and the like, except those prohibited by law or as otherwise provided in this Agreement, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct written authority of AUTHORITY, as ordered by a Court, as required by law, or as otherwise authorized in this Agreement, including but not limited to Section 14 and Section 24.

32. COUNTY INTERACTION WITH THE MEDIA AND THE PUBLIC

A. AUTHORITY shall review and approve in writing all AUTHORITY-related copy proposed to be used by COUNTY for advertising or public relations purposes prior to publication. COUNTY shall not allow AUTHORITY-related copy to be published in its advertisements and public relations programs prior to receiving such approval. COUNTY shall ensure that all information published for advertising or public relations purposes is factual and that it does not in any way imply that AUTHORITY endorses COUNTY's firm, service and/or product.

B. COUNTY shall refer all inquiries from the news media to AUTHORITY and shall comply with the procedures of AUTHORITY Public Affairs staff regarding statements to the media relating to this Agreement or the Services except as otherwise authorized by Section 14 of this Agreement. AUTHORITY shall refer all inquiries regarding County of Los Angeles and Sheriff's Department policies and procedures to COUNTY.

C. The provisions of this Section shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives.

Date: _____

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

By _____
Chief Executive Officer

Date: JUN 14 2016

COUNTY OF LOS ANGELES

By _____
Chair, Board of Supervisors

78504

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

LORI GLASGOW
Executive Officer
Clerk of the Board of Supervisors

By _____
Deputy

JUN 14 2016

ATTEST:
LORI GLASGOW
Executive Officer-Clerk
of Board of Supervisors of
the County of Los Angeles

By _____
Deputy

JUN 14 2016

APPROVED AS TO FORM
MARY C. WICKHAM
County Counsel

By _____
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#69 JUN 14 2016

LORI GLASGOW
EXECUTIVE OFFICER

AWARDED:

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM

CONTRACT NO. SP466-16
LAW ENFORCEMENT SERVICES

ATTACHMENT A
SCOPE OF SERVICES

1.0 PURPOSE

The Southern California Regional Rail Authority (AUTHORITY) is entering into this Agreement in order to secure the multi-faceted services of a commuter rail law enforcement agency that will support the operation of commuter rail service. AUTHORITY's objective in obtaining law enforcement services is to ensure riders and the community at large that METROLINK transportation is safe, efficient, and friendly.

2.0 BACKGROUND

AUTHORITY operates and maintains METROLINK, a commuter rail system serving six (6) Southern California counties. The AUTHORITY Board of Directors is made up of representatives from the AUTHORITY member agencies of Ventura, Los Angeles, Orange, San Bernardino and Riverside counties. AUTHORITY is responsible for operating and maintaining railroad rights of way (ROW) in the six counties along the METROLINK service corridor and operating on the lines of other freight railroads. METROLINK covers 536 route miles and serves more than 60 stations. Current operations include 144 daily revenue trains. METROLINK runs seven days a week with limited service on Saturday and Sundays.

3.0 SCOPE OF WORK

The Sheriff's Department shall coordinate services and negotiate agreements with outside law enforcement agencies in the METROLINK system area.

BASE LAW ENFORCEMENT SERVICES

The contract law enforcement organization that serves as AUTHORITY's policing agency will coordinate local law enforcement efforts along the METROLINK service corridor through the six counties. The Los Angeles County Sheriff's Department will have jurisdictional responsibility for all on-board incidents regardless where they occur.

The law enforcement agency must also have the ability to provide AUTHORITY the advantages of a full service law enforcement agency.

In specific incidents involving AUTHORITY equipment, any of the specialized resources could be called upon to expand Metrolink Bureau without additional cost to the AUTHORITY. For the purpose of this Scope of Services, specialized units can be provided by other agencies under mutual aid agreements.

It is mutually agreed that in all instances where special supplies, stationery, notices, forms, and the like must be issued in the name of AUTHORITY, the same shall be supplied by the AUTHORITY at its own cost and expense.
Other related services include the following:

Operations

1. Directly respond to all incidents aboard commuter rail trains requiring law enforcement presence or services.

2. Investigate, follow-up, and prepare legal documents and case filings for Authority - related crimes including on- board incidents and those along the Authority ROW patrolled by other agencies.

3. Participate in educational or training programs on rail safety, crime prevention, advocacy, and traffic safety.

4. Perform traffic enforcement and community services relative to AUTHORITY operations solely at times and locations designated in advance by AUTHORITY to COUNTY.

5. Provide AUTHORITY the advantages of a full service law enforcement agency by providing the following personnel and equipment resources. These personnel and equipment resources must be available for deployment to any location on the METROLINK system on an as needed basis in Los Angeles County.

    - Homicide investigators
    - Air units
    - Motorcycle details
    - Off-road units
    - Mounted posse
    - Gang enforcement teams
    - Special weapons teams
    - Undercover detective operations
    - Arson/Explosives experts
    - Reserve units for crowd control and major events

Fare Enforcement

1. Provide on-board fare enforcement including issuance of citations for fare violations and other quality of life matters in conjunction with AUTHORITY's operations contractor and on an as-needed basis. The Sheriff's Department shall provide a monthly report of all fare enforcement activities. The Sheriff's Department shall initiate periodic fare enforcement "sweeps" independent of AUTHORITY's operations contractor. These sweeps must be coordinated with the AUTHORITY Security Manager.

2. Provide training, education, and direction for any AUTHORITY conductors or any employee designated by the AUTHORITY to engage in fare enforcement as mandated by law. Participate in fare enforcement classes (8-10 hours each) for new conductors and remedial classes as needed.

3. Manage and maintain all citations and warnings issued on a computerized database and tracking system.

4. Provide monthly reports on citations and warnings, enforcement operations, including data and comparison of fare violations by line, train, and type of infraction.

Security Coordination

1. Develop mutual aid agreements and other cooperative agreements with all law enforcement agencies in each county and city through which METROLINK passes.

2. Develop Memoranda of Understanding (MOUs) with all law enforcement agencies system-wide.

3. Coordinate and provide daily required communication with local law enforcement, coroner's office and other public agencies and dispatch those agencies in response to AUTHORITY'S needs.

4. Respond and coordinate the response of local law enforcement agencies to all METROLINK-related crimes and establish jurisdiction.

5. Establish jurisdiction with local police jurisdictions and coordinate with each court of competent authority throughout the six counties in the METROLINK system.

6. Establish, manage and maintain filing and prosecutorial procedures with the city and district attorneys, and courts in each jurisdiction through which METROLINK passes.

7. Collect and provide periodic incident reporting for AUTHORITY to assist in the development of preventative strategies such as the Engineering and

Education efforts and provide this information to all law enforcement agencies. Provide AUTHORITY with a monthly report of on-board crimes by line, date, time, and type of crime. Provide AUTHORITY with a monthly report of ROW crimes by line, date, time and type of crime.

8. Provide AUTHORITY with monthly reports on ROW citations, ROW warnings, enforcement operations, and traffic citations at Highway-Rail Grade Crossings issued by the Sheriff's Department.

Training

1 Provide ongoing training and direction to METROLINK law enforcement personnel, appropriate AUTHORITY employees and other law enforcement subcontractors in the following areas:

- Corridor gangs and related problems
- Crowd control and civil disorder
- Fare inspection/enforcement
- Hazardous materials situations
- Incident command principles
- Jurisdictional and interagency operations issues
- Service oriented policing
- Terrorism/threats to transit systems
- Train accidents and derailments
- Transit law
- Weapons training/laws
- Radio procedures
- Vice activities, pickpockets, prostitution, gambling, etc.

2. Conduct training for outside (local) law enforcement and participate in Officer-on-the-Train, Multi-agency (mass casualty) drills, First Responder (emergency) training, and transit laws. All course work must be certified by the California Commission of Peace Officer Standards and Training (P.O.S.T.).

3. Coordinate the development, presentation and training of Operation Lifesaver, Trooper-on-the-Train, and First Responder training with the AUTHORITY Security Manager.

4. Provide required training for Sheriff's Department personnel. All law enforcement personnel must be POST-certified or have acceptable equivalent.

Communications & Inventory Control

1. Provide for membership in all local, state, and federal law enforcement telecommunication networks; as well as provides appropriate hardware for necessary transmissions and communications.

2. Establish and provide coverage for a 24-hour centralized communications center serving the six county areas to dispatch and coordinate law enforcement personnel and mutual aid emergency response teams. Provide radio coverage for all law enforcement personnel and vehicles in the six county areas.

3. Furnish all supervision, equipment, and supplies to maintain the level of required service.

RIGHT-OF-WAY LAW ENFORCEMENT SERVICES

Services included within this Scope of Work consist of patrolling the ROW and law enforcement on Railroad property (off the train) in Los Angeles County, all of which shall be performed only at locations and only according to schedules provided by AUTHORITY in advance to COUNTY. AUTHORITY understands and agrees that the law enforcement services provided hereunder are inadequate to accomplish patrolling or law enforcement at any particular location more than a few times a day or less. COUNTY shall have no obligation to patrol or provide law enforcement at any location at any particular time(s) except under a schedule provided in advance by AUTHORITY to COUNTY.

NOTE:

The law enforcement personnel responsible for patrolling the Authority ROW in Ventura and Orange counties will be provided by the specific counties and are **NOT** included within this Scope of Services.

The Sheriff's Department will provide decentralized, locally-situated facilities to house officers and equipment dedicated to METROLINK security and otherwise ensure geographic coverage within Los Angeles County.
The issues to be dealt with are:

- Vandalism control and adjudication
- Crowd control and civil disorder response
- Hazardous materials incident response
- Identify and report visual and other right-of-way obstructions
- Terrorism/threats to transit systems
- Train accidents and derailments
- Grade-crossing safety
- Car theft and abandonment on the ROW

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

CONTRACT NO. SP466-16
LAW ENFORCEMENT SERVICES

ATTACHMENT B
PRICE SCHEDULE

Personnel	Total Cost	Number of Positions
Deputy Service Unit	$8,756,400*	35

YEAR ONE – FY 16-17

*Includes 3% Liability

ATTACHMENT C

JAMS COMPREHENSIVE ARBITRATION RULES & PROCEDURES

JAMS Comprehensive Arbitration Rules & Procedures

JAMS Comprehensive Arbitration Rules & Procedures

Effective July 1, 2014

Download JAMS Comprehensive Arbitration Rules in PDF Format in English

Download:

Summary of July 1, 2014 Revisions to JAMS Comprehensive Arbitration Rules & Procedures

OPTIONAL EXPEDITED ARBITRATION PROCEDURES: Since 2010, JAMS has offered Optional Expedited Arbitration Procedures, whereby parties can choose a process that limits depositions, document requests and e-discovery. When parties utilizing JAMS Comprehensive Arbitration Rules elect to use these procedures, they agree to the voluntary and informal exchange of all non-privileged documents and other information relevant to the dispute. See Comprehensive Rules **16.1** and **16.2**.

Rule 1. Scope of Rules

(a) The JAMS Comprehensive Arbitration Rules and Procedures ("Rules") govern binding Arbitrations of disputes or claims that are administered by JAMS and in which the Parties agree to use these Rules or, in the absence of such agreement, any disputed claim or counterclaim that exceeds $250,000, not including interest or attorneys' fees, unless other Rules are prescribed.

(b) The Parties shall be deemed to have made these Rules a part of their Arbitration agreement ("Agreement") whenever they have provided for Arbitration by JAMS under its Comprehensive Rules or for Arbitration by JAMS without specifying any particular JAMS Rules and the disputes or claims meet the criteria of the first paragraph of this Rule.

(c) The authority and duties of JAMS as prescribed in the Agreement of the Parties and in these Rules shall be carried out by the JAMS National Arbitration Committee ("NAC") or the office of JAMS General Counsel or their designees.

(d) JAMS may, in its discretion, assign the administration of an Arbitration to any of its Resolution Centers.

(e) The term "Party" as used in these Rules includes Parties to the Arbitration and their counsel or representatives.

(f) "Electronic filing" (e-file) means the electronic transmission of documents to and from JAMS and other Parties for the purpose of filing via the Internet. "Electronic service" (e-service) means the electronic transmission of documents via JAMS Electronic Filing System to a Party, attorney or representative under these Rules.

Rule 2. Party Self-Determination and Emergency Relief Procedures

(a) The Parties may agree on any procedures not specified herein or in lieu of these Rules that are consistent with the applicable law and JAMS policies (including, without limitation, Rules 15(i), 30 and 31). The Parties shall promptly notify JAMS of any such Party-agreed procedures and shall confirm such procedures in writing. The Party-agreed procedures shall be enforceable as if contained in these Rules.

(b) When an Arbitration Agreement provides that the Arbitration will be non-administered or administered by an entity other than JAMS and/or conducted in accordance with rules other than JAMS Rules, the Parties may subsequently agree to modify that Agreement to provide that the Arbitration will be administered by JAMS and/or conducted in accordance with JAMS Rules.

(c) Emergency Relief Procedures. These Emergency Relief Procedures are available in Arbitrations filed and served after July 1, 2014, and where not otherwise prohibited by law. Parties may agree to opt out of these Procedures in their Arbitration Agreement or by subsequent written agreement.

(i) A Party in need of emergency relief prior to the appointment of an Arbitrator may notify JAMS and all other Parties in writing of the relief sought and the basis for an Award of such relief. This Notice shall include an explanation of why such relief is needed on an expedited basis. Such Notice shall be given by facsimile, email or personal delivery. The Notice must include a statement certifying that all other Parties have been notified. If all other Parties have not been notified, the Notice shall include an explanation of the efforts made to notify such Parties.

(ii) JAMS shall promptly appoint an Emergency Arbitrator to rule on the emergency request. In most cases the appointment of an Emergency Arbitrator will be done within 24 hours of receipt of the request. The Emergency Arbitrator shall promptly disclose any circumstance likely, on the basis disclosed in the application, to affect the Arbitrator's ability to be impartial or independent. Any challenge to the appointment of the Emergency Arbitrator shall be made within 24 hours of the disclosures by the Emergency Arbitrator. JAMS will promptly review and decide any such challenge. JAMS' decision will be final.

(iii) Within two business days, or as soon as practicable thereafter, the Emergency Arbitrator shall establish a schedule for the consideration of the request for emergency relief. The schedule shall provide a reasonable opportunity for all Parties to be heard taking into account the nature of the relief sought. The Emergency Arbitrator has the authority to rule on his or her own jurisdiction and shall resolve any disputes with respect to the request for emergency relief.

(iv) The Emergency Arbitrator shall determine whether the Party seeking emergency relief has shown that immediate and irreparable loss or damage will result in the absence of emergency relief and whether the requesting Party is entitled to such relief. The Emergency Arbitrator shall enter an order or Award granting or denying the relief, as the case may be, and stating the reasons therefor.

(v) Any request to modify the Emergency Arbitrator's order or Award must be based on changed circumstances and may be made to the Emergency Arbitrator until such time as an Arbitrator or Arbitrators are appointed in accordance with the Parties' Agreement and JAMS' usual procedures. Thereafter, any request related to the relief granted or denied by the Emergency Arbitrator shall be determined by the Arbitrator(s) appointed in accordance with the Parties' Agreement and JAMS' usual procedures.

(vi) At the Emergency Arbitrator's discretion, any interim Award of emergency relief may be conditioned on the provision of adequate security by the Party seeking such relief.

Rule 3. Amendment of Rules

JAMS may amend these Rules without notice. The Rules in effect on the date of the commencement of an Arbitration (as defined in Rule 5) shall apply to that Arbitration, unless the Parties have agreed upon another version of the Rules.

Rule 4. Conflict with Law

If any of these Rules, or modification of these Rules agreed to by the Parties, is determined to be in conflict with a provision of applicable law, the provision of law will govern over the Rule in conflict, and no other Rule will be affected.

Rule 5. Commencing an Arbitration

(a) The Arbitration is deemed commenced when JAMS issues a Commencement Letter based upon the existence of one of the following:

(i) A post-dispute Arbitration Agreement fully executed by all Parties specifying JAMS administration or use of any JAMS Rules; or

(ii) A pre-dispute written contractual provision requiring the Parties to arbitrate the dispute or claim and specifying JAMS administration or use of any JAMS Rules or that the Parties agree shall be administered by JAMS; or

(iii) A written confirmation of an oral agreement of all Parties to participate in an Arbitration administered by JAMS or conducted pursuant to any JAMS Rules; or

(iv) The Respondent's failure to timely object to JAMS administration; or

(v) A copy of a court order compelling Arbitration at JAMS.

(b) The issuance of the Commencement Letter confirms that requirements for commencement have been met, that JAMS has received all payments required under the applicable fee schedule and that the Claimant has provided JAMS with contact information for all Parties along with evidence that the Demand for Arbitration has been served on all Parties.

(c) If a Party that is obligated to arbitrate in accordance with subparagraph (a) of this Rule fails to agree to participate in the Arbitration process, JAMS shall confirm in writing that Party's failure to respond or participate, and, pursuant to Rule 22(j), the Arbitrator, once appointed, shall schedule, and provide appropriate notice of, a Hearing or other opportunity for the Party demanding the Arbitration to demonstrate its entitlement to relief.

(d) The date of commencement of the Arbitration is the date of the Commencement Letter but is not intended to be applicable to any legal requirements such as the statute of limitations, any contractual limitations period or claims notice requirements. The term "commencement," as used in this Rule, is intended only to pertain to the operation of this and other Rules (such as Rules 3, 13(a), 17(a) and 31(a)).

Rule 6. Preliminary and Administrative Matters

(a) JAMS may convene, or the Parties may request, administrative conferences to discuss any procedural matter relating to the administration of the Arbitration.

(b) If no Arbitrator has yet been appointed, at the request of a Party and in the absence of Party agreement, JAMS may determine the location of the Hearing, subject to Arbitrator review. In determining the location of the Hearing, such factors as the subject matter of the dispute, the convenience of the Parties and witnesses, and the relative resources of the Parties shall be considered.

(c) If, at any time, any Party has failed to pay fees or expenses in full, JAMS may order the suspension or termination of the proceedings. JAMS may so inform the Parties in order that one of them may advance the required payment. If one Party advances the payment owed by a non-paying Party, the Arbitration shall proceed, and the Arbitrator may allocate the non-paying Party's share of such costs, in accordance with Rules 24(f) and 31(c). An administrative suspension shall toll any other time limits contained in these Rules or the Parties' Agreement.

(d) JAMS does not maintain an official record of documents filed in the Arbitration. If the Parties wish to have any documents returned to them, they must advise JAMS in writing within thirty (30) calendar days of the conclusion of the Arbitration. If special arrangements are required regarding file maintenance or document retention, they must be agreed to in writing, and JAMS reserves the right to impose an additional fee for such special arrangements. Documents that are submitted for e-filing are retained for thirty (30) calendar days following the conclusion of the Arbitration.

(e) Unless the Parties' Agreement or applicable law provides otherwise, JAMS, if it determines that the Arbitrations so filed have common issues of fact or law, may consolidate Arbitrations in the following instances:

(i) If a Party files more than one Arbitration with JAMS, JAMS may consolidate the Arbitrations into a single Arbitration.

(ii) Where a Demand or Demands for Arbitration is or are submitted naming Parties already involved in another Arbitration or Arbitrations pending under these Rules, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

(iii) Where a Demand or Demands for Arbitration is or are submitted naming Parties that are not identical to the Parties in the existing Arbitration or Arbitrations, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

When rendering its decision, JAMS will take into account all circumstances, including the links between the cases and the progress already made in the existing Arbitrations.

Unless applicable law provides otherwise, where JAMS decides to consolidate a proceeding into a pending Arbitration, the Parties to the consolidated case or cases will be deemed to have waived their right to designate an Arbitrator as well as any contractual provision with respect to the site of the Arbitration.

(f) Where a third party seeks to participate in an Arbitration already pending under these Rules or where a Party to an Arbitration under these Rules seeks to compel a third party to participate in a pending Arbitration, the Arbitrator shall determine such request, taking into account all circumstances he or she deems relevant and applicable.

Rule 7. Number and Neutrality of Arbitrators; Appointment and Authority of Chairperson

(a) The Arbitration shall be conducted by one neutral Arbitrator, unless all Parties agree otherwise. In these Rules, the term "Arbitrator" shall mean, as the context requires, the Arbitrator or the panel of Arbitrators in a tripartite Arbitration.

(b) In cases involving more than one Arbitrator, the Parties shall agree on, or, in the absence of agreement, JAMS shall designate, the Chairperson of the Arbitration Panel. If the Parties and the Arbitrators agree, a single member of the Arbitration Panel may, acting alone, decide discovery and procedural matters, including the conduct of hearings to receive documents and testimony from third parties who have been subpoenaed to produce documents.

(c) Where the Parties have agreed that each Party is to name one Arbitrator, the Arbitrators so named shall be neutral and independent of the appointing Party, unless the Parties have agreed that they shall be non-neutral.

Rule 8. Service

(a) The Arbitrator may at any time require electronic filing and service of documents in an Arbitration. If an Arbitrator requires electronic filing, the Parties shall maintain and regularly monitor a valid, usable and live email address for the receipt of all documents filed through JAMS Electronic Filing System. Any document filed electronically shall be considered as filed with JAMS when the transmission to JAMS Electronic Filing System is complete. Any document e-filed by 11:59 p.m. (of the sender's time zone) shall be deemed filed on that date. Upon completion of filing, JAMS Electronic Filing System shall issue a confirmation receipt that includes the date and time of receipt. The confirmation receipt shall serve as proof of filing.

(b) Every document filed with JAMS Electronic Filing System shall be deemed to have been signed by the Arbitrator, Case Manager, attorney or declarant who submits the document to JAMS Electronic Filing System, and shall bear the typed name, address and telephone number of a signing attorney. Documents containing signatures of third parties (i.e., unopposed motions, affidavits, stipulations, etc.) may also be filed electronically by indicating that the original signatures are maintained by the filing Party

in paper format.

(c) Delivery of e-service documents through JAMS Electronic Filing System to other registered users shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through JAMS Electronic Filing System. E-service shall be deemed complete when the Party initiating e-service completes the transmission of the electronic document(s) to JAMS Electronic Filing System for e-filing and/or e-service. Upon actual or constructive receipt of the electronic document(s) by the Party to be served, a Certificate of Electronic Service shall be issued by JAMS Electronic Filing System to the Party initiating e-service, and that Certificate shall serve as proof of service. Any Party who ignores or attempts to refuse e-service shall be deemed to have received the electronic document(s) 72 hours following the transmission of the electronic document(s) to JAMS Electronic Filing System.

(d) If an electronic filing or service does not occur because of (1) an error in the transmission of the document to JAMS Electronic Filing System or served Party that was unknown to the sending Party; (2) a failure to process the electronic document when received by JAMS Electronic Filing System; (3) the Party being erroneously excluded from the service list; or (4) other technical problems experienced by the filer, the Arbitrator or JAMS may, for good cause shown, permit the document to be filed *nunc pro tunc* to the date it was first attempted to be sent electronically. Or, in the case of service, the Party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

(e) For documents that are not filed electronically, service by a Party under these Rules is effected by providing one signed copy of the document to each Party and two copies in the case of a sole Arbitrator and four copies in the case of a tripartite panel to JAMS. Service may be made by hand-delivery, overnight delivery service or U.S. mail. Service by any of these means is considered effective upon the date of deposit of the document.

(f) In computing any period of time prescribed or allowed by these Rules for a Party to do some act within a prescribed period after the service of a notice or other paper on the Party and the notice or paper is served on the Party only by U.S. mail, three (3) calendar days shall be added to the prescribed period.

Rule 9. Notice of Claims

(a) Each Party shall afford all other Parties reasonable and timely notice of its claims, affirmative defenses or counterclaims. Any such notice shall include a short statement of its factual basis. No claim, remedy, counterclaim or affirmative defense will be considered by the Arbitrator in the absence of such prior notice to the other Parties, unless the Arbitrator determines that no Party has been unfairly prejudiced by such lack of formal notice or all Parties agree that such consideration is appropriate notwithstanding the lack of prior notice.

(b) Claimant's notice of claims is the Demand for Arbitration referenced in Rule 5. It shall include a statement of the remedies sought. The Demand for Arbitration may attach and incorporate a copy of a Complaint previously filed with a court. In the latter case, Claimant may accompany the Complaint with a copy of any Answer to that Complaint filed by any Respondent.

(c) Within fourteen (14) calendar days of service of the notice of claim, a Respondent may submit to JAMS and serve on other Parties a response and a statement of any affirmative defenses, including jurisdictional challenges, or counterclaims it may have.

(d) Within fourteen (14) calendar days of service of a counterclaim, a Claimant may submit to JAMS and serve on other Parties a response to such counterclaim and any affirmative defenses, including jurisdictional challenges, it may have.

(e) Any claim or counterclaim to which no response has been served will be deemed denied.

(f) Jurisdictional challenges under Rule 11 shall be deemed waived, unless asserted in a response to a Demand or counterclaim or promptly thereafter, when circumstances first suggest an issue of arbitrability.

Rule 10. Changes of Claims

After the filing of a claim and before the Arbitrator is appointed, any Party may make a new or different claim against a Party or any third party that is subject to Arbitration in the proceeding. Such claim shall be made in writing, filed with JAMS and served on the other Parties. Any response to the new claim shall be made within fourteen (14) calendar days after service of such claim. After the Arbitrator is appointed, no new or different claim may be submitted, except with the Arbitrator's approval. A Party may request a hearing on this issue. Each Party has the right to respond to any new or amended claim in accordance with Rule 9(c) or (d).

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Rule 11. Interpretation of Rules and Jurisdictional Challenges

(a) Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final.

(b) Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.

(c) Disputes concerning the appointment of the Arbitrator shall be resolved by JAMS.

(d) The Arbitrator may, upon a showing of good cause or *sua sponte*, when necessary to facilitate the Arbitration, extend any deadlines established in these Rules, provided that the time for rendering the Award may be altered only in accordance with Rules 22(i) or 24.

Rule 12. Representation

(a) The Parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by counsel or any other person of the Party's choice. Each Party shall give prompt written notice to the Case Manager and the other Parties of the name, address, telephone and fax numbers and email address of its representative. The representative of a Party may act on the Party's behalf in complying with these Rules.

(b) Changes in Representation. A Party shall give prompt written notice to the Case Manager and the other Parties of any change in its representation, including the name, address, telephone and fax numbers and email address of the new representative. Such notice shall state that the written consent of the former representative, if any, and of the new representative, has been obtained and shall state the effective date of the new representation.

Rule 13. Withdrawal from Arbitration

(a) No Party may terminate or withdraw from an Arbitration after the issuance of the Commencement Letter (see Rule 5), except by written agreement of all Parties to the Arbitration.

(b) A Party that asserts a claim or counterclaim may unilaterally withdraw that claim or counterclaim without prejudice by serving written notice on the other Parties and the Arbitrator. However, the opposing Parties may, within seven (7) calendar days of service of such notice, request that the Arbitrator condition the withdrawal upon such terms as he or she may direct.

Rule 14. *Ex Parte* Communications

(a) No Party may have any *ex parte* communication with a neutral Arbitrator, except as provided in section (b) of this Rule. The Arbitrator(s) may authorize any Party to communicate directly with the Arbitrator(s) by email or other written means as long as copies are simultaneously forwarded to the JAMS Case Manager and the other Parties.

(b) A Party may have *ex parte* communication with its appointed neutral or non-neutral Arbitrator as necessary to secure the Arbitrator's services and to assure the absence of conflicts, as well as in connection with the selection of the Chairperson of the arbitral panel.

(c) The Parties may agree to permit more extensive *ex parte* communication between a Party and a non-neutral Arbitrator. More extensive communication with a non-neutral Arbitrator may also be permitted by applicable law and rules of ethics.

Rule 15. Arbitrator Selection, Disclosures and Replacement

(a) Unless the Arbitrator has been previously selected by agreement of the Parties, JAMS may attempt to facilitate agreement among the Parties regarding selection of the Arbitrator.

(b) If the Parties do not agree on an Arbitrator, JAMS shall send the Parties a list of at least five (5) Arbitrator candidates in the case of a sole Arbitrator and ten (10) Arbitrator candidates in the case of a tripartite panel. JAMS shall also provide each Party with a brief description of the background and experience of each Arbitrator candidate. JAMS may replace any or all names on the list of Arbitrator candidates for reasonable cause at any time before the Parties have submitted their choice pursuant to subparagraph (c) below.

(c) Within seven (7) calendar days of service upon the Parties of the list of names, each Party may strike two (2) names in the case of a sole Arbitrator and three (3) names in the case of a tripartite panel, and shall rank the remaining Arbitrator candidates in order of preference. The remaining Arbitrator candidate with the highest composite ranking shall be appointed the Arbitrator. JAMS may grant a reasonable extension of the time to strike and rank the Arbitrator candidates to any Party without the consent of the other Parties.

(d) If this process does not yield an Arbitrator or a complete panel, JAMS shall designate the sole Arbitrator or as many members of the tripartite panel as are necessary to complete the panel.

(e) If a Party fails to respond to a list of Arbitrator candidates within seven (7) calendar days after its service, or fails to respond according to the instructions provided by JAMS, JAMS shall deem that Party to have accepted all of the Arbitrator candidates.

(f) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of the Arbitrator selection process. JAMS shall determine whether the interests between entities are adverse for purposes of Arbitrator selection, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the Arbitration.

(g) If, for any reason, the Arbitrator who is selected is unable to fulfill the Arbitrator's duties, a successor Arbitrator shall be chosen in accordance with this Rule. If a member of a panel of Arbitrators becomes unable to fulfill his or her duties after the beginning of a Hearing but before the issuance of an Award, a new Arbitrator will be chosen in accordance with this Rule, unless, in the case of a tripartite panel, the Parties agree to proceed with the remaining two Arbitrators. JAMS will make the final determination as to whether an Arbitrator is unable to fulfill his or her duties, and that decision shall be final.

(h) Any disclosures regarding the selected Arbitrator shall be made as required by law or within ten (10) calendar days from the date of appointment. Such disclosures may be provided in electronic format, provided that JAMS will produce a hard copy to any Party that requests it. The Parties and their representatives shall disclose to JAMS any circumstance likely to give rise to justifiable doubt as to the Arbitrator's impartiality or

independence, including any bias or any financial or personal interest in the result of the Arbitration or any past or present relationship with the Parties or their representatives. The obligation of the Arbitrator, the Parties and their representatives to make all required disclosures continues throughout the Arbitration process.

(i) At any time during the Arbitration process, a Party may challenge the continued service of an Arbitrator for cause. The challenge must be based upon information that was not available to the Parties at the time the Arbitrator was selected. A challenge for cause must be in writing and exchanged with opposing Parties, who may respond within seven (7) calendar days of service of the challenge. JAMS shall make the final determination as to such challenge. Such determination shall take into account the materiality of the facts and any prejudice to the Parties. That decision will be final.

(j) Where the Parties have agreed that a Party-appointed Arbitrator is to be non-neutral, that Party-appointed Arbitrator is not obliged to withdraw if requested to do so only by the Party who did not appoint that Arbitrator.*

Rule 16. Preliminary Conference

At the request of any Party or at the direction of the Arbitrator, a Preliminary Conference shall be conducted with the Parties or their counsel or representatives. The Preliminary Conference may address any or all of the following subjects:

(a) The exchange of information in accordance with Rule 17 or otherwise;

(b) The schedule for discovery as permitted by the Rules, as agreed by the Parties or as required or authorized by applicable law;

(c) The pleadings of the Parties and any agreement to clarify or narrow the issues or structure the Arbitration Hearing;

(d) The scheduling of the Hearing and any pre-Hearing exchanges of information, exhibits, motions or briefs;

(e) The attendance of witnesses as contemplated by Rule 21;

(f) The scheduling of any dispositive motion pursuant to Rule 18;

(g) The premarking of exhibits, the preparation of joint exhibit lists and the resolution of the admissibility of exhibits;

(h) The form of the Award; and

(i) Such other matters as may be suggested by the Parties or the Arbitrator.

The Preliminary Conference may be conducted telephonically and may be resumed from time to time as warranted.

Rule 16.1. Application of Expedited Procedures

(a) If these Expedited Procedures are referenced in the Parties' agreement to arbitrate or are later agreed to by all Parties, they shall be applied by the Arbitrator.

(b) The Claimant or Respondent may opt into the Expedited Procedures. The Claimant may do so by indicating the election in the Demand for Arbitration. The Respondent may opt into the Expedited Procedures by so indicating in writing to JAMS with a copy to the Claimant served within fourteen (14) days of receipt of the Demand for Arbitration. If a Party opts into the Expedited Procedures, the other side shall indicate within seven (7) calendar days of notice thereof whether it agrees to the Expedited Procedures.

(c) If one Party elects the Expedited Procedures and any other Party declines to agree to the Expedited Procedures, each Party shall have a client or client representative present at the first Preliminary Conference (which should, if feasible, be an in-person conference), unless excused by the Arbitrator for good cause.

Rule 16.2. Where Expedited Procedures Are Applicable

(a) The Arbitrator shall require compliance with Rule 17(a) prior to conducting the first Preliminary Conference. Each Party shall confirm in writing to the Arbitrator that it has so complied or shall indicate any limitations on full compliance and the reasons therefor.

(b) Document requests shall (1) be limited to documents that are directly relevant to the matters in dispute or to its outcome; (2) be reasonably restricted in terms of time frame, subject matter and persons or entities to which the requests pertain; and (3) not include broad phraseology such as "all documents directly or indirectly related to." The Requests shall not be encumbered with extensive "definitions" or "instructions." The Arbitrator may edit or limit the number of requests.

(c) E-Discovery shall be limited as follows:

(i) There shall be production of electronic documents only from sources used in the ordinary course of business. Absent a showing of compelling need, no such documents are required to be produced from backup servers, tapes or other media.

(ii) Absent a showing of compelling need, the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format that is usable by the requesting Party and convenient and economical for the producing Party. Absent a showing of compelling need, the Parties need not produce metadata, with the exception of header fields for email correspondence.

(iii) The description of custodians from whom electronic documents may be collected should be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute.

(iv) Where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the Arbitrator may either deny such requests or order disclosure on the condition that the requesting Party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final Award.

(v) The Arbitrator may vary these Rules after discussion with the Parties at the Preliminary Conference.

(d) Depositions of percipient witnesses shall be limited as follows:

(i) The limitation of one discovery deposition per side (Rule 17(b)) shall be applied by the Arbitrator, unless it is determined, based on all relevant circumstances, that more depositions are warranted. The Arbitrator shall consider the amount in controversy, the complexity of the factual issues, the number of Parties and the diversity of their interests and whether any or all of the claims appear, on the basis of the pleadings, to have sufficient merit to justify the time and expense associated with the requested discovery.

(ii) The Arbitrator shall also consider the additional factors listed in the JAMS Recommended Arbitration Discovery Protocols for Domestic Commercial Cases.

(e) Expert depositions, if any, shall be limited as follows: Where written expert reports are produced to the other side in advance of the Hearing (Rule 17(a)), expert depositions may be conducted only by agreement of the Parties or by order of the Arbitrator for good cause shown.

(f) Discovery disputes shall be resolved on an expedited basis.

(i) Where there is a panel of three Arbitrators, the Parties are encouraged to agree, by rule or otherwise, that the Chair or another member of the panel is authorized to resolve discovery issues, acting alone.

(ii) Lengthy briefs on discovery matters should be avoided. In most cases, the submission of brief letters will sufficiently inform the Arbitrator with regard to the issues to be decided.

(iii) The Parties should meet and confer in good faith prior to presenting any issues for the Arbitrator's decision.

(iv) If disputes exist with respect to some issues, that should not delay the Parties' discovery on remaining issues.

(g) The Arbitrator shall set a discovery cutoff not to exceed seventy-five (75) calendar days after the Preliminary Conference for percipient discovery and not to exceed one hundred five (105) calendar days for expert discovery (if any). These dates may be extended by the Arbitrator for good cause shown.

(h) Dispositive motions (Rule 18) shall not be permitted, except as set forth in the JAMS Recommended Arbitration Discovery Protocols for Domestic Commercial Cases or unless the Parties agree to that procedure.

(i) The Hearing shall commence within sixty (60) calendar days after the cutoff for percipient discovery. Consecutive Hearing days shall be established unless otherwise agreed by the Parties or ordered by the Arbitrator. These dates may be extended by the Arbitrator for good cause shown.

(j) The Arbitrator may alter any of these Procedures for good cause.

Rule 17. Exchange of Information

(a) The Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information ("ESI")) relevant to the dispute or claim immediately after commencement of the Arbitration. They shall complete an initial exchange of all relevant, non-privileged documents, including, without limitation, copies of all documents in their possession or control on which they rely in support of their positions, and names of individuals whom they may call as witnesses at the Arbitration Hearing, within twenty-one (21) calendar days after all pleadings or notice of claims have been received. The Arbitrator may modify these obligations at the Preliminary Conference.

(b) Each Party may take one deposition of an opposing Party or of one individual under the control of the opposing Party. The Parties shall attempt to agree on the time, location and duration of the deposition. If the Parties do not agree, these issues shall be determined by the Arbitrator. The necessity of additional depositions shall be determined by the Arbitrator based upon the reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing Parties and the witness.

(c) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties continue to be obligated to provide relevant, non-privileged documents to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that were not previously exchanged, or witnesses and experts that were not previously identified, may not be considered by the Arbitrator at the Hearing, unless agreed by the Parties or upon a showing of good cause.

(d) The Parties shall promptly notify JAMS when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute. With the written consent of all Parties, and in accordance with an agreed written procedure, the Arbitrator may appoint a special master to assist in resolving a discovery dispute.

Rule 18. Summary Disposition of a Claim or Issue

The Arbitrator may permit any Party to file a Motion for Summary Disposition of a particular claim or issue, either by agreement of all interested Parties or at the request of one Party, provided other interested Parties have reasonable notice to respond to the request.

Rule 19. Scheduling and Location of Hearing

(a) The Arbitrator, after consulting with the Parties that have appeared, shall determine the date, time and location of the Hearing. The Arbitrator and the Parties shall attempt to schedule consecutive Hearing days if more than one day is necessary.

(b) If a Party has failed to participate in the Arbitration process, the Arbitrator may set the Hearing without consulting with that Party. The non-participating Party shall be served with a Notice of Hearing at least thirty (30) calendar days prior to the scheduled date, unless the law of the relevant jurisdiction allows for, or the Parties have agreed to, shorter notice.

(c) The Arbitrator, in order to hear a third-party witness, or for the convenience of the Parties or the witnesses, may conduct the Hearing at any location. Any JAMS Resolution Center may be designated a Hearing location for purposes of the issuance of a subpoena or subpoena *duces tecum* to a third-party witness.

Rule 20. Pre-Hearing Submissions

(a) Except as set forth in any scheduling order that may be adopted, at least fourteen (14) calendar days before the Arbitration Hearing, the Parties shall file with JAMS and serve and exchange (1) a list of the witnesses they intend to call, including any experts; (2) a short description of the anticipated testimony of each such witness and an estimate of the length of the witness' direct testimony; (3) any written expert reports that may be introduced at the Arbitration Hearing; and (4) a list of all exhibits intended to be used at the Hearing. The Parties should exchange with each other copies of any such exhibits to the extent that they have not been previously exchanged. The Parties should pre-mark exhibits and shall attempt to resolve any disputes regarding the admissibility of exhibits prior to the Hearing.

(b) The Arbitrator may require that each Party submit a concise written statement of position, including summaries of the facts and evidence a Party intends to present, discussion of the applicable law and the basis for the requested Award or denial of relief sought. The statements, which may be in the form of a letter, shall be filed with JAMS and served upon the other Parties at least seven (7) calendar days before the Hearing date. Rebuttal statements or other pre-Hearing written submissions may be permitted or required at the discretion of the Arbitrator.

Rule 21. Securing Witnesses and Documents for the Arbitration Hearing

At the written request of a Party, all other Parties shall produce for the Arbitration Hearing all specified witnesses in their employ or under their control without need of subpoena. The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents either prior to or at the Hearing pursuant to this Rule or Rule 19(c). The subpoena or subpoena *duces tecum* shall be issued in accordance with the applicable law. Pre-issued subpoenas may be used in jurisdictions that permit them. In the event a Party or a subpoenaed person objects to the production of a witness or other evidence, the Party or subpoenaed person may file an objection with the Arbitrator, who shall promptly rule on the objection, weighing both the burden on the producing Party and witness and the need of the proponent for the witness or other evidence.

Rule 22. The Arbitration Hearing

(a) The Arbitrator will ordinarily conduct the Arbitration Hearing in the manner set forth in these Rules. The Arbitrator may vary these procedures if it is determined to be reasonable and appropriate to do so.

(b) The Arbitrator shall determine the order of proof, which will generally be similar to

that of a court trial.

(c) The Arbitrator shall require witnesses to testify under oath if requested by any Party, or otherwise at the discretion of the Arbitrator.

(d) Strict conformity to the rules of evidence is not required, except that the Arbitrator shall apply applicable law relating to privileges and work product. The Arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The Arbitrator may be guided in that determination by principles contained in the Federal Rules of Evidence or any other applicable rules of evidence. The Arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all Parties are afforded the opportunity to present material and relevant evidence.

(e) The Arbitrator shall receive and consider relevant deposition testimony recorded by transcript or videotape, provided that the other Parties have had the opportunity to attend and cross-examine. The Arbitrator may in his or her discretion consider witness affidavits or other recorded testimony even if the other Parties have not had the opportunity to cross-examine, but will give that evidence only such weight as he or she deems appropriate.

(f) The Parties will not offer as evidence, and the Arbitrator shall neither admit into the record nor consider, prior settlement offers by the Parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated, except to the extent that applicable law permits the admission of such evidence.

(g) The Hearing, or any portion thereof, may be conducted telephonically or videographically with the agreement of the Parties or at the discretion of the Arbitrator.

(h) When the Arbitrator determines that all relevant and material evidence and arguments have been presented, and any interim or partial Awards have been issued, the Arbitrator shall declare the Hearing closed. The Arbitrator may defer the closing of the Hearing until a date determined by the Arbitrator in order to permit the Parties to submit post-Hearing briefs, which may be in the form of a letter, and/or to make closing arguments. If post-Hearing briefs are to be submitted or closing arguments are to be made, the Hearing shall be deemed closed upon receipt by the Arbitrator of such briefs or at the conclusion of such closing arguments, whichever is later.

(i) At any time before the Award is rendered, the Arbitrator may, *sua sponte* or on application of a Party for good cause shown, reopen the Hearing. If the Hearing is reopened, the time to render the Award shall be calculated from the date the reopened Hearing is declared closed by the Arbitrator.

(j) The Arbitrator may proceed with the Hearing in the absence of a Party that, after receiving notice of the Hearing pursuant to Rule 19, fails to attend. The Arbitrator may not render an Award solely on the basis of the default or absence of the Party, but shall require any Party seeking relief to submit such evidence as the Arbitrator may require for the rendering of an Award. If the Arbitrator reasonably believes that a Party will not attend the Hearing, the Arbitrator may schedule the Hearing as a telephonic Hearing and may receive the evidence necessary to render an Award by affidavit. The notice of Hearing shall specify if it will be in person or telephonic.

(k) Any Party may arrange for a stenographic or other record to be made of the Hearing and shall inform the other Parties in advance of the Hearing.

(i) The requesting Party shall bear the cost of such stenographic record. If all other Parties agree to share the cost of the stenographic record, it shall be made available to the Arbitrator and may be used in the proceeding.

(ii) If there is no agreement to share the cost of the stenographic record, it may not be provided to the Arbitrator and may not be used in the proceeding, unless the Party arranging for the stenographic record agrees to provide access to the stenographic record either at no charge or on terms that are acceptable to the

Parties and the reporting service.

(iii) If the Parties agree to the Optional Arbitration Appeal Procedure (Rule 34), they shall, if possible, ensure that a stenographic or other record is made of the Hearing and shall share the cost of that record.

(iv) The Parties may agree that the cost of the stenographic record shall or shall not be allocated by the Arbitrator in the Award.

Rule 23. Waiver of Hearing

The Parties may agree to waive the oral Hearing and submit the dispute to the Arbitrator for an Award based on written submissions and other evidence as the Parties may agree.

Rule 24. Awards

(a) The Arbitrator shall render a Final Award or a Partial Final Award within thirty (30) calendar days after the date of the close of the Hearing, as defined in Rule 22(h) or (i), or, if a Hearing has been waived, within thirty (30) calendar days after the receipt by the Arbitrator of all materials specified by the Parties, except (1) by the agreement of the Parties; (2) upon good cause for an extension of time to render the Award; or (3) as provided in Rule 22(i). The Arbitrator shall provide the Final Award or the Partial Final Award to JAMS for issuance in accordance with this Rule.

(b) Where a panel of Arbitrators has heard the dispute, the decision and Award of a majority of the panel shall constitute the Arbitration Award.

(c) In determining the merits of the dispute, the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator shall be guided by the rules of law and equity that he or she deems to be most appropriate. The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy.

(d) In addition to a Final Award or Partial Final Award, the Arbitrator may make other decisions, including interim or partial rulings, orders and Awards.

(e) Interim Measures. The Arbitrator may grant whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods. Such interim measures may take the form of an interim or Partial Final Award, and the Arbitrator may require security for the costs of such measures. Any recourse by a Party to a court for interim or provisional relief shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(f) The Award of the Arbitrator may allocate Arbitration fees and Arbitrator compensation and expenses, unless such an allocation is expressly prohibited by the Parties' Agreement. (Such a prohibition may not limit the power of the Arbitrator to allocate Arbitration fees and Arbitrator compensation and expenses pursuant to Rule 31(c).)

(g) The Award of the Arbitrator may allocate attorneys' fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' Agreement or allowed by applicable law. When the Arbitrator is authorized to award attorneys' fees and must determine the reasonable amount of such fees, he or she may consider whether the failure of a Party to cooperate reasonably in the discovery process and/or comply with the Arbitrator's discovery orders caused delay to the proceeding or additional costs to the other Parties.

(h) The Award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. Unless all Parties agree otherwise, the Award shall also contain a concise written statement of the reasons for the Award.

(i) After the Award has been rendered, and provided the Parties have complied with Rule 31, the Award shall be issued by serving copies on the Parties. Service may be made by U.S. mail. It need not be sent certified or registered.

(j) Within seven (7) calendar days after service of a Partial Final Award or Final Award by JAMS, any Party may serve upon the other Parties and on JAMS a request that the Arbitrator correct any computational, typographical or other similar error in an Award (including the reallocation of fees pursuant to Rule 31(c) or on account of the effect of an offer to allow judgment), or the Arbitrator may *sua sponte* propose to correct such errors in an Award. A Party opposing such correction shall have seven (7) calendar days thereafter in which to file any objection. The Arbitrator may make any necessary and appropriate corrections to the Award within twenty-one (21) calendar days of receiving a request or fourteen (14) calendar days after his or her proposal to do so. The Arbitrator may extend the time within which to make corrections upon good cause. The corrected Award shall be served upon the Parties in the same manner as the Award.

(k) The Award is considered final, for purposes of either the Optional Arbitration Appeal Procedure pursuant to Rule 34 or a judicial proceeding to enforce, modify or vacate the Award pursuant to Rule 25, fourteen (14) calendar days after service is deemed effective if no request for a correction is made, or as of the effective date of service of a corrected Award.

Rule 25. Enforcement of the Award

Proceedings to enforce, confirm, modify or vacate an Award will be controlled by and conducted in conformity with the Federal Arbitration Act, 9 U.S.C. Sec 1, *et seq.*, or applicable state law. The Parties to an Arbitration under these Rules shall be deemed to have consented that judgment upon the Award may be entered in any court having jurisdiction thereof.

Rule 26. Confidentiality and Privacy

(a) JAMS and the Arbitrator shall maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision.

(b) The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

(c) Subject to the discretion of the Arbitrator or agreement of the Parties, any person having a direct interest in the Arbitration may attend the Arbitration Hearing. The Arbitrator may exclude any non-Party from any part of a Hearing.

Rule 27. Waiver

(a) If a Party becomes aware of a violation of or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the Arbitrator determines that waiver will cause substantial injustice or hardship.

(b) If any Party becomes aware of information that could be the basis of a challenge for cause to the continued service of the Arbitrator, such challenge must be made promptly, in writing, to the Arbitrator or JAMS. Failure to do so shall constitute a waiver of any objection to continued service by the Arbitrator.

Rule 28. Settlement and Consent Award

(a) The Parties may agree, at any stage of the Arbitration process, to submit the case to JAMS for mediation. The JAMS mediator assigned to the case may not be the Arbitrator or a member of the Appeal Panel, unless the Parties so agree, pursuant to Rule 28(b).

(b) The Parties may agree to seek the assistance of the Arbitrator in reaching settlement. By their written agreement to submit the matter to the Arbitrator for settlement assistance, the Parties will be deemed to have agreed that the assistance of the Arbitrator in such settlement efforts will not disqualify the Arbitrator from continuing

to serve as Arbitrator if settlement is not reached; nor shall such assistance be argued to a reviewing court as the basis for vacating or modifying an Award.

(c) If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator shall comply with such request, unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed Consent Award, he or she shall inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

Rule 29. Sanctions

The Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator. These sanctions may include, but are not limited to, assessment of Arbitration fees and Arbitrator compensation and expenses; assessment of any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or, in extreme cases, determining an issue or issues submitted to Arbitration adversely to the Party that has failed to comply.

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Rule 30. Disqualification of the Arbitrator as a Witness or Party and Exclusion of Liability

(a) The Parties may not call the Arbitrator, the Case Manager or any other JAMS employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the Parties and relating to the dispute that is the subject of the Arbitration. The Arbitrator, Case Manager and other JAMS employees and agents are also incompetent to testify as witnesses or experts in any such proceeding.

(b) The Parties shall defend and/or pay the cost (including any attorneys' fees) of defending the Arbitrator, Case Manager and/or JAMS from any subpoenas from outside parties arising from the Arbitration.

(c) The Parties agree that neither the Arbitrator, nor the Case Manager, nor JAMS is a necessary Party in any litigation or other proceeding relating to the Arbitration or the subject matter of the Arbitration, and neither the Arbitrator, nor the Case Manager, nor JAMS, including its employees or agents, shall be liable to any Party for any act or omission in connection with any Arbitration conducted under these Rules, including, but not limited to, any disqualification of or recusal by the Arbitrator.

Rule 31. Fees

(a) Each Party shall pay its *pro rata* share of JAMS fees and expenses as set forth in the JAMS fee schedule in effect at the time of the commencement of the Arbitration, unless the Parties agree on a different allocation of fees and expenses. JAMS' agreement to render services is jointly with the Party and the attorney or other representative of the Party in the Arbitration. The non-payment of fees may result in an administrative suspension of the case in accordance with Rule 6(c).

(b) JAMS requires that the Parties deposit the fees and expenses for the Arbitration from time to time during the course of the proceedings and prior to the Hearing. The Arbitrator may preclude a Party that has failed to deposit its *pro rata* or agreed-upon share of the fees and expenses from offering evidence of any affirmative claim at the Hearing.

(c) The Parties are jointly and severally liable for the payment of JAMS Arbitration fees and Arbitrator compensation and expenses. In the event that one Party has paid more than its share of such fees, compensation and expenses, the Arbitrator may award against any other Party any such fees, compensation and expenses that such Party owes with respect to the Arbitration.

(d) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of JAMS' assessment of fees. JAMS shall determine whether the interests between entities are adverse for purpose of fees, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the Arbitration.

Rule 32. Bracketed (or High-Low) Arbitration Option

(a) At any time before the issuance of the Arbitration Award, the Parties may agree, in writing, on minimum and maximum amounts of damages that may be awarded on each claim or on all claims in the aggregate. The Parties shall promptly notify JAMS and provide to JAMS a copy of their written agreement setting forth the agreed-upon minimum and maximum amounts.

(b) JAMS shall not inform the Arbitrator of the agreement to proceed with this option or of the agreed-upon minimum and maximum levels without the consent of the Parties.

(c) The Arbitrator shall render the Award in accordance with Rule 24.

(d) In the event that the Award of the Arbitrator is between the agreed-upon minimum and maximum amounts, the Award shall become final as is. In the event that the Award is below the agreed-upon minimum amount, the final Award issued shall be corrected to reflect the agreed-upon minimum amount. In the event that the Award is above the agreed-upon maximum amount, the final Award issued shall be corrected to reflect the agreed-upon maximum amount.

Rule 33. Final Offer (or Baseball) Arbitration Option

(a) Upon agreement of the Parties to use the option set forth in this Rule, at least seven (7) calendar days before the Arbitration Hearing, the Parties shall exchange and provide to JAMS written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate based on the standard set forth in Rule 24(c). JAMS shall promptly provide copies of the Parties' proposals to the Arbitrator, unless the Parties agree that they should not be provided to the Arbitrator. At any time prior to the close of the Arbitration Hearing, the Parties may exchange revised written proposals or demands, which shall supersede all prior proposals. The revised written proposals shall be provided to JAMS, which shall promptly provide them to the Arbitrator, unless the Parties agree otherwise.

(b) If the Arbitrator has been informed of the written proposals, in rendering the Award, the Arbitrator shall choose between the Parties' last proposals, selecting the proposal that the Arbitrator finds most reasonable and appropriate in light of the standard set forth in Rule 24(c). This provision modifies Rule 24(h) in that no written statement of reasons shall accompany the Award.

(c) If the Arbitrator has not been informed of the written proposals, the Arbitrator shall render the Award as if pursuant to Rule 24, except that the Award shall thereafter be corrected to conform to the closest of the last proposals and the closest of the last proposals will become the Award.

(d) Other than as provided herein, the provisions of Rule 24 shall be applicable.

Rule 34. Optional Arbitration Appeal Procedure

The Parties may agree at any time to the JAMS Optional Arbitration Appeal Procedure. All Parties must agree in writing for such procedure to be effective. Once a Party has agreed to the Optional Arbitration Appeal Procedure, it cannot unilaterally withdraw from it, unless it withdraws, pursuant to Rule 13, from the Arbitration.

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that the procurement continues to be cost-effective. FTA shall be notified of any such event.

§ 639.33 Management of leased assets.

Each recipient must maintain an inventory of capital assets acquired by standard FTA project management guidelines.

PART 640—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

AUTHORITY: Secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.51.

§ 640.1 Cross-reference to credit assistance.

The regulations in 49 CFR part 80 shall be followed in complying with the requirements of this part. Title 49, CFR, part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241.

[64 FR 29753, June 2, 1999]

PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS

Subpart A—General

Sec.

Subpart B—Program Requirements

Subpart C—Prohibited Drug Use

Subpart D—Prohibited Alcohol Use

Subpart E—Types of Testing

Subpart F—Drug and Alcohol Testing Procedures

Subpart G—Consequences

Subpart H—Administrative Requirements

Subpart I—Certifying Compliance

AUTHORITY: 49 U.S.C. 5331; 49 CFR 1.51.

SOURCE: 66 FR 42002, Aug. 9, 2001, unless otherwise noted.

Subpart A—General

§ 655.1 Purpose.

The purpose of this part is to establish programs to be implemented by employers that receive financial assistance from the Federal Transit Administration (FTA) and by contractors of those employers, that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

§ 655.2 Overview.

(a) This part includes nine subparts. Subpart A of this part covers the general requirements of FTA's drug and alcohol testing programs. Subpart B of this part specifies the basic requirements of each employer's alcohol misuse and prohibited drug use program, including the elements required to be in each employer's testing program. Subpart C of this part describes prohibited drug use. Subpart D of this part describes prohibited alcohol use. Subpart E of this part describes the types of alcohol and drug tests to be conducted. Subpart F of this part addresses the testing procedural requirements mandated by the Omnibus Transportation Employee Testing Act of 1991, and as required in 49 CFR Part 40. Subpart G of this part lists the consequences for covered employees who engage in alcohol misuse or prohibited drug use. Subpart H of this part contains administrative matters, such as reports and recordkeeping requirements. Subpart I of this part specifies how a recipient certifies compliance with the rule.

(b) This part must be read in conjunction with 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

§ 655.3 Applicability.

(a) Except as specifically excluded in paragraphs (b), and (c) of this section, this part applies to:

(1) Each recipient and subrecipient receiving Federal assistance under:

(i) 49 U.S.C. 5307, 5309, or 5311; or

(ii) 23 U.S.C. 103(e)(4); and

(2) Any contractor of a recipient or subrecipient of Federal assistance under:

(i) 49 U.S.C. 5307, 5309, or 5311; or

(ii) 23 U.S.C. 103(e)(4).

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR Part 219 and § 655.83 for its railroad operations, and shall follow this part for its non-railroad operations, if any.

(c) A recipient operating a ferryboat regulated by the United States Coast Guard (USCG) that satisfactorily complies with the testing requirements of 46 CFR Parts 4 and 16, and 33 CFR Part 95 shall be in concurrent compliance with the testing requirements of this part. This exception shall not apply to the provisions of section 655.45, or subparts G, or H of this part.

[66 FR 42002, Aug. 9, 2001, as amended at 71 FR 69198, Nov. 30, 2006]

§ 655.4 Definitions.

For this part, the terms listed in this section have the following definitions. The definitions of additional terms used in this part but not listed in this section can be found in 49 CFR Part 40.

Accident means an occurrence associated with the operation of a vehicle, if as a result:

(1) An individual dies; or

(2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Anti-drug program means a program to detect and deter the use of prohibited drugs as required by this part.

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official that the recipient has complied with the provisions of this part. (See § 655.82 and § 655.83 for certification requirements.)

Contractor means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part. A volunteer is a covered employee if:

(1) The volunteer is required to hold a commercial driver's license to operate the vehicle; or

(2) The volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

Disabling damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion.* Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or tail light damage.

(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

DOT or *The Department* means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug and alcohol testing. See 14 CFR part 121, appendices I and J; 33 CFR part 95; 46 CFR parts 4, 5, and 16; and 49 CFR parts 199, 219, 382, and 655.

Employer means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Performing (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positive, negative, and refusals) under this part.

Railroad means:

(1) All forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

(2) Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means an entity receiving Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311; or under 23 U.S.C. 103(e)(4).

Refuse to submit means any circumstance outlined in 49 CFR 40.191 and 40.261.

Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. 5307 or 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;

(5) Carrying a firearm for security purposes.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A mass transit vehicle is a vehicle used for mass transportation or for ancillary services.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of alcohol random screening tests (including refusals) conducted under this part.

[66 FR 42002, Aug. 9, 2001, as amended at 68 FR 75462, Dec. 31, 2003]

§ 655.5 Stand-down waivers for drug testing.

(a) An employer subject to this part may petition the FTA for a waiver allowing the employer to stand down, per 49 CFR Part 40, an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

(b) Each petition for a waiver must be in writing and include facts and justification to support the waiver. Each petition must satisfy the requirements for obtaining a waiver, as provided in 49 CFR 40.21.

(c) Each petition for a waiver must be submitted to the Office of Safety and Security, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW. Washington, DC 20590.

(d) The Administrator may grant a waiver subject to 49 CFR 40.21(d).

§ 655.6 Preemption of state and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any state or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the state or local requirement and any requirement in this part is not possible; or

(2) Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 655.7 Starting date for testing programs.

An employer must have an anti-drug and alcohol misuse testing program in place by the date the employer begins operations.

Subpart B—Program Requirements

§ 655.11 Requirement to establish an anti-drug use and alcohol misuse program.

Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part.

§ 655.12 Required elements of an anti-drug use and alcohol misuse program.

An anti-drug use and alcohol misuse program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol

misuse. This policy statement shall include all of the elements specified in § 655.15. Each employer shall disseminate the policy consistent with the provisions of § 655.16.

(b) An education and training program which meets the requirements of § 655.14.

(c) A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR Part 40.

(d) Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

§ 655.13 [Reserved]

§ 655.14 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

(a) *Education.* The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.

(b) *Training*—(1) *Covered employees.* Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

(2) *Supervisors.* Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 655.15 Policy statement contents.

The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

(a) The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior and conduct prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.

(e) The procedures that will be used to test for the presence of illegal drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug and alcohol testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy.

(h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40.

(i) The consequences, as set forth in § 655.35 of subpart D, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(j) The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

§ 655.16 Requirement to disseminate policy.

Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures.

§ 655.17 Notice requirement.

Before performing a drug or alcohol test under this part, each employer shall notify a covered employee that the test is required by this part. No employer shall falsely represent that a test is administered under this part.

§§ 655.18–655.20 [Reserved]

Subpart C—Prohibited Drug Use

§ 655.21 Drug testing.

(a) An employer shall establish a program that provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.

(b) When administering a drug test, an employer shall ensure that the following drugs are tested for:

(1) Marijuana;

(2) Cocaine;

(3) Opiates;

(4) Amphetamines; and

(5) Phencyclidine.

(c) Consumption of these products is prohibited at all times.

§§ 655.22–655.30 [Reserved]

Subpart D—Prohibited Alcohol Use

§ 655.31 Alcohol testing.

(a) An employer shall establish a program that provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return to duty/follow-up. An employer may also conduct pre-employment alcohol testing.

(b) Each employer shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater, from performing or continuing to perform a safety-sensitive function.

§ 655.32 On duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 655.33 Pre-duty use.

(a) *General.* Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.

(b) *On-call employees.* An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:

(1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

(2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§ 655.34 Use following an accident.

Each employer shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test under § 655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§ 655.35 Other alcohol-related conduct.

(a) No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than 0.02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§§ 655.36–655.40 [Reserved]

Subpart E—Types of Testing

§ 655.41 Pre-employment drug testing.

(a)(1) Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result.

(2) When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in § 655.62.

(b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result.

(c) If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

(d) When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result.

§ 655.42 Pre-employment alcohol testing.

An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements:

(a) The employer must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(b) The employer must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (*i.e.*, you must not test some covered employees and not others).

(c) The employer must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(d) The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40.

(e) The employer must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02.

§ 655.43 Reasonable suspicion testing.

(a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

(b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official(s) who is trained in detecting the

signs and symptoms of drug use and alcohol misuse must make the required observations.

(c) Alcohol testing is authorized under this section only if the observations required by paragraph (b) of this section are made during, just preceding, or just after the period of the workday that the covered employee is required to be in compliance with this part. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(d) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (b) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (b) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

§ 655.44 Post-accident testing.

(a) Accidents. (1) *Fatal accidents.* (i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 389.303(a)(1) or (b)(1).

(ii) The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) *Nonfatal accidents.* (i) As soon as practicable following an accident not involving the loss of human life in which a mass transit vehicle is involved, the employer shall drug and alcohol test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and maintain the record. Records shall be submitted to FTA upon request of the Administrator.

(b) An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within 32 hours of the accident.

(c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

(d) The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.

(e) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(f) The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer. Such test results may be used only when the employer is unable to perform a post-accident test within the required period noted in paragraphs (a) and (b) of this section.

§ 655.45 Random testing.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 10 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, respectively, on the reported positive drug and alcohol violation rates for the entire industry. All information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by this part. In order to ensure reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry's verified positive results and violation rates. Each year, the Administrator will publish in the FEDERAL REGISTER the minimum annual percentage rates for random drug and alcohol testing of covered employees. The new minimum annual percentage rate for random drug and alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c) Rates for drug testing. (1) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for the two preceding consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(2) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 655.72 for the calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug or random alcohol testing to 50 percent of all covered employees.

(d) Rates for alcohol testing. (1)(i) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(ii) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(2)(i) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage

rate for random alcohol testing to 25 percent of all covered employees.

(ii) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol testing determined by the Administrator. If the employer conducts random drug and alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug and alcohol testing at the same minimum annual percentage rate under this part.

(g) Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.

(h) Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately.

(i) A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

(j) If a given covered employee is subject to random drug and alcohol testing under the testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug and alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(k) If an employer is required to conduct random drug and alcohol testing under the drug and alcohol testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§ 655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.

Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40.

§ 655.47 Follow-up testing after returning to duty.

An employer shall conduct follow-up testing of each employee who returns

to duty, as specified in 49 CFR Part 40, subpart O.

§ 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.

If an employer chooses to permit a covered employee to perform a safety-sensitive function within 8 hours of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer shall retest the covered employee to ensure compliance with the provisions of § 655.35. The covered employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02.

§ 655.49 Refusal to submit to a drug or alcohol test.

(a) Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under § 655.44, a random drug and alcohol test required under § 655.45, a reasonable suspicion drug and alcohol test required under § 655.43, or a follow-up drug and alcohol test required under § 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

(b) When an employee refuses to submit to a drug or alcohol test, the employer shall follow the procedures outlined in 49 CFR Part 40.

§ 655.50 [Reserved]

Subpart F—Drug and Alcohol Testing Procedures

§ 655.51 Compliance with testing procedures requirements.

The drug and alcohol testing procedures in 49 CFR Part 40 apply to employers covered by this part, and must be read together with this part, unless expressly provided otherwise in this part.

§ 655.52 Substance abuse professional (SAP).

The SAP must perform the functions in 49 CFR Part 40.

§ 655.53 Supervisor acting as collection site personnel.

An employer shall not permit an employee with direct or immediate supervisory responsibility or authority over another employee to serve as the urine collection person, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee.

§§ 655.54–655.60 [Reserved]

Subpart G—Consequences

§ 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.

(a) (1) Immediately after receiving notice from a medical review officer (MRO) or a consortium/third party administrator (C/TPA) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function.

(2) Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require that the covered employee cease performing a safety-sensitive function.

(3) If an employee refuses to submit to a drug or alcohol test required by this part, the employer shall require that the covered employee cease performing a safety-sensitive function.

(b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure the employee meets the requirements of 49 CFR Part 40 for returning to duty, including taking a return to duty drug and/or alcohol test.

§ 655.62 Referral, evaluation, and treatment.

If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and

telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

§§ 655.63–655.70 [Reserved]

Subpart H—Administrative Requirements

§ 655.71 Retention of records.

(a) *General requirement.* An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* In determining compliance with the retention period requirement, each record shall be maintained for the specified minimum period of time as measured from the date of the creation of the record. Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of covered employee verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, and covered employee referrals to the substance abuse professional, and copies of annual MIS reports submitted to FTA.

(2) *Two years.* Records related to the collection process and employee training.

(3) *One year.* Records of negative drug or alcohol test results.

(c) *Types of records.* The following specific records must be maintained:

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests.

(iv) Documents generated in connection with decisions on post-accident drug and alcohol testing.

(v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine or breathe sample.

(2) Records related to test results:

(i) The employer's copy of the custody and control form.

(ii) Documents related to the refusal of any covered employee to submit to a test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a test administered under this part.

(3) Records related to referral and return to duty and follow-up testing: Records concerning a covered employee's entry into and completion of the treatment program recommended by the substance abuse professional.

(4) Records related to employee training:

(i) Training materials on drug use awareness and alcohol misuse, including a copy of the employer's policy on prohibited drug use and alcohol misuse.

(ii) Names of covered employees attending training on prohibited drug use and alcohol misuse and the dates and times of such training.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

(5) Copies of annual MIS reports submitted to FTA.

§ 655.72 Reporting of results in a management information system.

(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.

(b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.

(c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.

(d) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40, § 40.25 and appendix H. You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: *http://transit-safety.volpe.dot.gov/DAMIS.*

(e) To calculate the total number of covered employees eligible for random testing throughout the year, as an employer, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. As an employer, you may use a service agent (e.g., C/TPA) to perform random selections for you; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(f) If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a paratransit vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(g) A service agent (e.g., Consortia/Third Party Administrator as defined in 49 CFR part 40) may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

[66 FR 42002, Aug. 9, 2001, as amended at 68 FR 75462, Dec. 31, 2003]

§ 655.73 Access to facilities and records.

(a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 655.71.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon the employer's receipt of payment for the production of those records.

(c) An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's drug or alcohol testing

related to the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

(i) An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR parts 40 and 655.

§§ 655.74–655.80 [Reserved]

Subpart I—Certifying Compliance

§ 655.81 Grantee oversight responsibility.

A grantee shall ensure that the recipients of funds under 49 U.S.C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part.

§ 655.82 Compliance as a condition of financial assistance.

(a) *General.* A recipient may not be eligible for Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 or under 23 U.S.C. 103(e)(4), if a recipient fails to establish and implement an anti-drug and alcohol misuse program as required by this part. Failure to certify compliance with these requirements, as specified in § 655.83, may result in the suspension of a grantee's eligibility for Federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under 18 U.S.C. 1001.

(c) *State's role.* Each State shall certify compliance on behalf of its 49 U.S.C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) subrecipients, as applicable. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 5307, 5309, 5311 or 103(e)(4) subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 655.83 Requirement to certify compliance.

(a) A recipient of FTA financial assistance shall annually certify compliance, as set forth in § 655.82, to the applicable FTA Regional Office.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

(c) A recipient will be ineligible for further FTA financial assistance if the recipient fails to establish and implement an anti-drug and alcohol misuse program in accordance with this part.

(d) FTA may determine that a recipient, who fails to comply with the USCG chemical and alcohol testing requirements, shall be in noncompliance with the alcohol misuse and controlled substances testing requirements of this part. A finding of noncompliance by FTA may lead to the suspension of eligibility for Federal public transportation funding.

[66 FR 42002, Aug. 9, 2001, as amended at 71 FR 69198, Nov. 30, 2006]

PART 659—RAIL FIXED GUIDEWAY SYSTEMS; STATE SAFETY OVERSIGHT

Subpart A—General Provisions

Sec.